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STATE OF CALIFORNIA
Legislature



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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 4, 1989

1:55 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

FRANK ALBINO, Member
Board of Medical Quality Assurance
Division of Medical Quality

J. THOMAS HAWTHORNE, Member
California Transportation Commission

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FRANK ALBINO, Member
Board of Medical Quality Assurance
Division of Medical Quality

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Frank Albino, Member of the Board of Medical Quality Assurance, Division of Medical Quality. Mr. Albino, please come forward.

Mr. Albino, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. ALBINO: Yes, Senator.

I presume that the Committee Members have received copies of my resume from the Governor's Office. To briefly summarize what's in it, I'm an attorney in private practice, born and reared in New York City, but a native of California since 1969, having moved here directly out of law school.

I went to St. John's University, undergraduate, in New York and Harvard Law School. I've been in private practice with a large civil practice firm in Los Angeles since law school. And in that period of time, I've practiced in the business law area primarily, and a good part of my practice has been in rendering legal advice and counseling to health care provider organizations, primarily physicians and groups of physicians, although I do real estate and employee benefits law work as well.

And so, for many, many years I've had an interest in the health law field, and I believe that the Division I've been appointed to does not have another public member on it who is an attorney. I hope to be able to bring a particular perspective

2
1 with regard to due process on the Division to which I've been
2 appointed, the Division of Medical Quality, which as you know
3 deals with discipline of physician licenses. And in that
4 capacity, I hope to be of service to the Governor and to the
5 people of the State.

6 CHAIRMAN ROBERTI: Thank you, Mr. Albino.

7 Are there any questions?

8 Let me ask you a couple of questions. One of the
9 concerns -- and much of this we've obtained from various
10 enterprising newspapers; the San Jose Mercury News ran a series
11 of articles, I believe, or an article on leniency toward the
12 physicians by BMQA. Some of the statistics are a bit
13 disconcerting.

14 For example, according to the Mercury News, of the 212
15 doctors disciplined by BMQA from 1976-1986 for criminal
16 convictions for such crimes as sale of prescription drugs, child
17 molestation, rape, murder, or fraud, only 49, or 23 percent, had
18 their licenses taken away. The remainder were put on probation
19 or received a lesser penalty.

20 Also, on October 19th, they indicated that over a
21 ten-year period, from '76-86, almost a tenth of the doctors cited
22 for offenses by BMQA were repeat offenders.

23 I guess the long and short of this is a general concern
24 that physicians' licenses aren't pulled when you have some really
25 grievous problems.

26 MR. ALBINO: I very much share the concern in that
27 regard. I have been functioning on the Division of Medical
28

1 Quality for approximately six months pending confirmation. In
2 that time I have expressed my opinions along those lines.

3 I've been told by more senior members of the Division
4 that in a number of cases -- I won't get into specific cases --
5 that there is the concern that outright revocation is not -- is
6 frequently overturned, you know, that the physician can appeal
7 that to a Superior Court and basically get a de novo hearing on
8 it. I've often heard some members express the opinion, which
9 seems rather strange to me, that it's better to, for example, in
10 cases of gross incompetence, to -- as a disciplinary measure, to
11 require the physician to undergo an extended clinical retraining
12 rather than to revoke the license, because it's more likely to be
13 upheld by the court.

14 My person opinion is that we have an obligation to the
15 public to protect the public against incompetent physicians and
16 physicians who otherwise breach the Medical Practice Act, and
17 that we should not be too concerned with what the courts are
18 going to do. That's up to the courts. We have to call them the
19 way we see them and according to what we believe is right.

20 So personally, I would not hesitate to vote to revoke a
21 license in an appropriate case.

22 CHAIRMAN ROBERTI: Thank you.

23 Senator Mello.

24 SENATOR MELLO: Just to follow through on Senator
25 Roberti's questioning, those statistics that you read were
26 correct, but according to this study, there was a total of about
27 4500 complaints filed in that one year: 4651. Then the
28

1 administrative decision adopted a total of about a hundred. And
2 it's true, 23 percent of those ended up in revocation, but it
3 just seems like out of over 4400 complaints, very few reach a
4 state where the Board votes to either revoke, or suspend, or
5 probation, or some other category.

6 MR. ALBINO: With regard to those --

7 SENATOR MELLO: If you compared that with speeders on
8 the highway, I think you'd find a lot of different percentages.

9 MR. ALBINO: I think perhaps, Senator, in many cases
10 informal agreements are reached with the practitioner. There is
11 a diversion program, for example, that the Board sponsors to
12 divert from the normal disciplinary process physicians who have
13 substance abuse problems. In other cases, I think, discipline is
14 done by agreement or on an informal basis.

15 Ken Wagstaff, the Executive Director, is present. I've
16 only been on the Board a short time --

17 SENATOR MELLO: Is he up for confirmation also?

18 MR. WAGSTAFF: I'm subject to their confirmation.

19 MR. ALBINO: Perhaps he could give you a fuller --

20 SENATOR MELLO: I just think there's been an ongoing
21 criticism that the number of actual decisions that are against
22 practitioners are very, very low. There seems to be like a buddy
23 system there to some extent.

24 The other thing I wanted to ask you is, once there is a
25 revocation from practice in the State, that does not prohibit
26 them from practicing in a military hospital, or a county
27 hospital, or several other types of hospitals within the State of
28 California; is that correct?

1 MR. ALBINO: I don't know the answer to that.

2 I mean, there is a data sharing that takes place through
3 the Federation of State Medical Boards, I know, where discipline
4 in any State is communicated to other States to which the
5 licensee either may already be practicing in or may later apply
6 for license to practice.

7 SENATOR MELLO: Say they have a two-year revocation.
8 They go to practice in another State.

9 MR. ALBINO: The other State would be made aware of the
10 discipline. In California, I assume in other States as well, the
11 very fact of discipline by another State is grounds, without even
12 addressing the substance of the discipline or the reason for it,
13 for discipline in California.

14 I assume that other States have those same rules. We do
15 share data, I know, with other States on our disciplines.

16 SENATOR MELLO: I've heard that they've gotten hired
17 into military hospitals.

18 The other things is, where do all of these decisions
19 come from? If it's substance abuse or something else, what are
20 the factors that lead to a suspension or revocation of a license?

21 MR. ALBINO: Well, the Board has established priorities
22 of how it allocates its resources in investigating cases of
23 complaints that are made by the public.

24 Many of the cases that I've seen in the limited time
25 that I've been on the Board are in the area of substance abuse,
26 sexual abuse, or harassment of patients, and incompetence or
27 gross negligence are the main areas that I see frequently in the
28 many cases that I get to review.

1 SENATOR MELLO: What about foreign doctors that are
2 certified to practice medicine in another country. When they
3 enter California, they have to pass a test here and also have
4 certain qualifications in order to be licensed in California?

5 MR. ALBINO: Yes, although, as you may be aware, that is
6 a function of the Division of Licensing, which is basically an
7 autonomous branch of the Board of Medical Quality Assurance.

8 I have been appointed to the Division of Medical
9 Quality, which does not deal at all with licensing but rather
10 with discipline.

11 SENATOR MELLO: Thank you.

12 MR. ALBINO: Thank you.

13 CHAIRMAN ROBERTI: Last year the Majority Leader, a
14 colleague, carried a piece of legislation, SB 2565, which BMQA
15 took a position of support on. It called for peer review of
16 doctors' actions in hospitals which, those who supported the bill
17 felt, would help do something to tighten up medical practice in
18 the hospitals, especially against those doctors who are lax or
19 don't have the confidence of their peers.

20 BMQA took a position in support of the bill, then they,
21 at the 11th hour, right before the bill was to be heard on the
22 Floor, took a position of opposition.

23 I have mixed information as to how active you were in
24 either the support or opposition to the bill. I have some
25 information you were very, very active in getting BMQA to oppose
26 the bill; others have told me no, you voted to oppose it but you
27 weren't that active. Maybe that's neither here nor there.

1 The issue is, why did you vote to oppose the bill? What
2 were your reasons, if our objective is to help tighten up lax
3 practice?

4 MR. ALBINO: Yes.

5 At the time when the Board took its original position on
6 the bill, I was not a member of the Division that dealt with
7 that, so my first look at this whole thing was last summer, when
8 it was suggested to the Division of Medical Quality by the
9 Executive Director that the Division might want to take another
10 look at the bill, owing to extensive amendments that had been
11 made since the Board first looked at it.

12 At a meeting in September, prior to a meeting that the
13 Board had and the Division had in September, the staff
14 distributed to all the members of the Division -- perhaps to the
15 entire Board, I'm not certain -- a package of materials, pro and
16 con, on the bill by leading organizations that were in support
17 and opposed to it. Basically it was the California Hospitals
18 Associations and some independent hospitals that were opposing
19 it, and the California Medical Association that was in support of
20 the bill; although other materials were included in the package.

21 I attended the meeting of the Division of Medical
22 Quality in September that considered this, and it was quite a
23 well-attended meeting, a standing-room-only meeting, and a lot of
24 interest was expressed on the bill. At the meeting, the Division
25 of Medical Quality heard both sides, pro and con, on the issue.

26 Based on all the materials that I read, including the
27 bill itself, and the testimony that was given at that meeting,
28

1 plus opinions expressed, once again, by more senior members of
2 the Division, I -- my feeling was that the bill would -- or at
3 least there was a danger that was not adequately explained away,
4 the bill would significantly slow down the hospital disciplinary,
5 or peer review disciplinary process.

6 CHAIRMAN ROBERTI: The ones that were already in place
7 right now?

8 MR. ALBINO: Yes, that is already -- right now, peer
9 review procedures that were involved in hospital peer review are
10 basically based on hospital staff by-laws. And there is no legal
11 prescription of how to do it.

12 The concern was expressed by a number of people that
13 elaborate due process requirements set forth in this bill would
14 basically get attorneys too much involved in the hospital
15 disciplinary process, which ultimately leads to what's called an
16 805 Report. The law requires hospitals, when they discipline a
17 physician's staff privileges, to report that fact to the Board of
18 Medical Quality Assurance. That is an important source, I'm
19 told, of information for the Board in them investigating the
20 physician involved as to whether professional licensing
21 discipline may also be indicated in the case.

22 So, I was concerned that the -- that would interfere
23 with that so-called 805 process, and that it was not as well
24 thought out as it could be.

25 I shared the opinion of the majority of the Division,
26 that it ought to be looked at again. We weren't convinced there
27 was a real need for it. We, I think, expressed the thought, with
28

1 which I agree, that we're willing to work with the CMA to try to
2 work out a better bill that, perhaps, we would be more convinced
3 would not interfere with the 805 process.

4 But perhaps one aspect of your question I did not
5 answer, I don't think I was any more or less active on that. I
6 wasn't campaigning or lobbying anything.

7 CHAIRMAN ROBERTI: You had never taken an earlier
8 position?

9 MR. ALBINO: No.

10 CHAIRMAN ROBERTI: You never had to vote on it
11 previously?

12 MR. ALBINO: Never previously, no.

13 CHAIRMAN ROBERTI: Any other questions?

14 Is there any opposition in the audience?

15 SENATOR CRAVEN: Move Mr. Albino's confirmation.

16 CHAIRMAN ROBERTI: Senator Craven moves Mr. Albino's
17 confirmation to the Floor.

18 Any discussion or debate? Secretary will call the roll.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris. Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

27
28

1 The vote is four to nothing; confirmation is recommended
2 to the Floor.

3 MR. ALBINO: Thank you.

4 (Thereupon the Committee took up
5 legislative matters.)

6 CHAIRMAN ROBERTI: The next item is Mr. J. Thomas
7 Hawthorne, Member of the California Transportation Commission.

8 MR. HAWTHORNE: Mr. Chairman, Members of the Committee.

9 CHAIRMAN ROBERTI: You've been heard before, and we'll
10 ask you the same question: why you feel you're qualified to
11 maintain this position?

12 MR. HAWTHORNE: Thank you, Mr. Chairman.

13 My basic education is civil engineering. I've
14 maintained a contractor's license for 40 years in the State of
15 California.

16 I'm presently an active member of the California Chamber
17 of Commerce and a Director on the California Manufacturers'
18 Association.

19 I'm concerned with the quality and the quantity of our
20 transportation systems throughout the State. I travel
21 extensively; fly my own airplane, and I'm interested from rail,
22 to aviation, and the highway program.

23 I have worked diligently for the past five years,
24 almost, in trying to provide objectivity and concern for the
25 transportation system of California. I would like to continue to
26 do so with your permission today.

27 CHAIRMAN ROBERTI: Senator Mello.
28

1 SENATOR MELLO: I think you and others are doing a very
2 good, conscientious job on the Commission, but I think we have to
3 start looking at where we are. You mentioned the quality and
4 quantity of the transportation system.

5 In a national survey, we are now 50th, out of 50 States,
6 in our support of transportation. Never before has our fine
7 freeway system, which we had 20-30 years ago, gone down hill so
8 much. Not only this present administration but, I think, the one
9 prior to that can receive part of the blame as well.

10 But you're also an engineer, a person that knows how to
11 do things.

12 We're behind \$5 billion for the STIP program, and 20
13 billion over a 20-year period.

14 How are we going to do this without more revenues?

15 MR. HAWTHORNE: We can't.

16 SENATOR MELLO: Is there a way?

17 MR. HAWTHORNE: There is no way, Senator. We're in
18 complete agreement that we must have some kind of increased
19 revenue.

20 We look to the leadership of the legislation and the
21 Governor to try and provide that; as a Commissioner, to try and
22 provide the objectivity in seeing that fair share is distributed
23 throughout all the counties.

24 SENATOR MELLO: I think the Legislature has been
25 supporting an increase, certainly, and funding for
26 transportation. In fact, even recently, Senator Maddy and
27 Assemblyman Nolan, I think, went in and talked to the Governor
28

1 about the realization that the time has passed to raise revenues.

2 I think he rejected them, as I read about it in the press.

3 Have you communicated this to the administration?

4 MR. HAWTHORNE: To the best of our ability. We don't
5 have any more access to the Governor's Office than you would,
6 Senator. But we sure are trying to tell him our concerns, and
7 the need's here, certainly. We're in dire need of that because
8 of the increased population of automobiles and people coming in,
9 the need to maintain our economy and transportation.

10 SENATOR MELLO: Also, from your position of really
11 understanding. As I read the maintenance problem right now, the
12 Commission or the Department released a statement recently, and I
13 believe it's true. They said that for every dollar that we can
14 spend today on maintenance to help protect the subgrade in our
15 roads, if we don't do it now, it's going to cost \$20 later on.

16 MR. HAWTHORNE: I have not seen that statement. No way
17 of even being able to ascertain that.

18 SENATOR MELLO: They made such a statement about a year
19 or two ago.

20 Well, I think you're a fine person, just like all the
21 members of the Commission, but I think we're just verbalizing the
22 problem instead of trying to solve it. Somebody's got to get a
23 message to the Governor. I think that both parties are on record
24 of trying to address this transportation problem, a way to raise
25 more revenue. The gas tax fund is one; some areas have run into
26 sales tax, which is another way of raising money. It's got to
27 come from some place.
28

1 I think somebody is not addressing the administration
2 that we have to have not peanuts, but it's a sizeable amount of
3 money to catch up.

4 MR. HAWTHORNE: I think the devastating loss of
5 Proposition 74 this last year, with the billion dollar bond
6 issue, was something that we were all heavily counting on.

7 SENATOR MELLO: What's a billion dollars if you're
8 behind five billion in a five-year STIP?

9 MR. HAWTHORNE: The plan as we visualized it was to
10 raise a billion there, and then to come back again the following
11 bill and raise another billion-four.

12 We're really not -- it's where you draw the line in the
13 five billion.

14 SENATOR MELLO: Let me ask you another question. I do
15 have some disagreement with the use of going to bonds. I
16 understand the reason because of the Gann Limitation.

17 MR. HAWTHORNE: Sure.

18 SENATOR MELLO: But it just seems unwise. It seems
19 better to change the Gann Initiative than it is to try to take
20 care of our maintenance and our repairs of our roads and new
21 construction with a bond issue, because even when the Governor
22 passed that bond issue, he had to raise revenues to pay off the
23 bonds in the form of either gas tax or something else.

24 If you have to raise revenues to pay off bonds, why not
25 raise revenues to pay directly into solving the problem?

26 MR. HAWTHORNE: As I've seen the expenditures and what's
27 happening right now, about 900 million of our budget goes for
28 maintenance, and we're gaining on maintenance.

1 The problem is, the traffic is gaining on us, and we're
2 not staying up with capacity improvement. But maintenance and
3 safety are the primary priorities right now, and we are not, in
4 my opinion, losing ground in the maintenance end of it.

5 Safety projects come first as far as capacity, and
6 maintenance budget, and then of course, trying to stay up with
7 the interstate program where we have matching State funds in
8 order to take maximum advantage of the federal dollars. However,
9 the federal dollars are being cut back continuously under the
10 Gramm-Rudman plan as well, and that is one of our problems.
11 That's anticipated with this STIP, about 700 million short in
12 federal funds to our California budget alone.

13 SENATOR MELLO: What I'd like to see when you leave this
14 meeting here, at your next meeting, is to have the Commission go
15 on record very strongly with a resolution, or what ever way they
16 can express themselves, to the administration and to the
17 Legislature -- give us the message also -- of how you foresee
18 raising revenue to help meet our transportation needs in
19 California.

20 I think it's the Commission whom we look to for
21 direction, and if they are in agreement that more funds are
22 needed, certainly they ought to voice that opinion.

23 MR. HAWTHORNE: I will certainly take that to the
24 Commission as your direction, Senator.

25 The Commission has been looking more to the
26 administration and the legislation and saying, "You give us the
27 tools to work with, and we'll fix the highways and airports."
28

1 Our airport program is just atrocious in California. We're not
2 gaining at all.

3 I certainly will take that message, and hopefully we can
4 bring some leadership.

5 SENATOR MELLO: Thank you.

6 CHAIRMAN ROBERTI: Are there any circumstances under
7 which you would support a gasoline tax?

8 MR. HAWTHORNE: I would support anything to bring more
9 revenue into the system today, Senator Roberti. I have not in
10 the past, hoping that Proposition 74 would help us get through
11 this STIP period. But whatever means come forth, we're going to
12 have to have more revenue for California, or we're going to be in
13 very bad economic problems, not just transportation mobility
14 problems.

15 CHAIRMAN ROBERTI: The last time your confirmation came
16 up was in 1985, I think. There was a Los Angeles Times article
17 regarding potential conflicts of interest.

18 MR. HAWTHORNE: Yes, sir.

19 CHAIRMAN ROBERTI: And that was because you had been
20 voting on San Diego projects, and you're a major contractor in
21 San Diego.

22 You indicated that you would cease and desist in voting
23 on those contracts. I think at one meeting my information tells
24 me that you did; however, subsequently, you started voting on the
25 San Diego transportation projects once again.

26 My concern is that you're in violation of the conflict
27 of interest law of the Fair Political Practices Act, a portion of
28 it.

1 What is your understanding of this? Why are you
2 continuing to vote? Do you have an explanation?

3 SENATOR CRAVEN: Tom, before you begin, if I may for the
4 record, Mr. Chairman, clarify, it is my understanding -- I hope
5 I'm not going to embarrass myself by saying this -- Mr. Hawthorne
6 is not a contractor. Mr. Hawthorne sells equipment which is
7 utilized by contractors. He doesn't go out and build roads.

8 Do you, Tom?

9 MR. HAWTHORNE: No, I do not contract in the highway
10 program today. I still contract, but --

11 SENATOR CRAVEN: But not --

12 CHAIRMAN ROBERTI: You sell the equipment to the
13 contractors.

14 SENATOR CRAVEN: Yes.

15 MR. HAWTHORNE: That's right, Senator, I do.

16 CHAIRMAN ROBERTI: Heavy equipment.

17 SENATOR CRAVEN: And, of course, every time a contractor
18 builds a road, he doesn't go out, unfortunately for Mr.
19 Hawthorne, and buy a new piece of equipment. He buys it when he
20 needs it, I presume.

21 MR. HAWTHORNE: That's right.

22 SENATOR CRAVEN: That may not necessarily be in concert
23 with the frequency of the chronology of the contracts.

24 MR. HAWTHORNE: That's true, thank you.

25 Senator, to answer your question more specifically, I
26 have not voted on issues to bring additional revenue, which was
27 the concern of the FPPC, because San Diego County is a deficit
28

1 county in its allocation of funds. So consequently, my vote in
2 support of an issue of dividing which project would be approved
3 was my knowledge of the local community in San Diego. I was not
4 voting to bring more dollars into the program.

5 CHAIRMAN ROBERTI: Your explanation, you were voting to
6 apportion what is there?

7 MR. HAWTHORNE: Yes, sir.

8 CHAIRMAN ROBERTI: And that apportionment really, in and
9 of itself, does not affect your business. You were not voting on
10 bringing more dollars.

11 MR. HAWTHORNE: That's absolutely correct, Senator. I
12 have watched that.

13 The issues of which I have abstained in were areas where
14 I would own real estate, and those issues I have avoided --

15 CHAIRMAN ROBERTI: You've avoided those?

16 MR. HAWTHORNE: I've avoided those.

17 CHAIRMAN ROBERTI: I'll let your explanation stand.
18 I'll accept it.

19 It is a very close area. I frankly think in this area
20 the law is stringent, maybe overly so, but nevertheless, it seems
21 to be what's on the books.

22 There is a concern voiced to us, and it was voiced to us
23 four years ago, that your votes tend to be borderline in this
24 area. On the other hand, who's going to vote on a San Diego
25 project if not somebody from San Diego who has some reasonable
26 knowledge of the business? It becomes a very difficult issue.

27

28

1 Based on your point on the apportionment, I will accept
2 that. I will hold your confirmation on the Floor for two weeks
3 in the event there's a contrary position as to what your format
4 has been so that it can be voiced to us. But for now, I intend
5 to vote for your confirmation based on the answers you've given
6 us.

7 SENATOR CRAVEN: Just in passing, Mr. Chairman,
8 presumably the FPPC has a regulatory force over the
9 Commissioners; is that not correct?

10 CHAIRMAN ROBERTI: Yes.

11 SENATOR CRAVEN: Using your comment, which I think you
12 said it was rather borderline in one instance, Mr. Hawthorne, has
13 the FPPC, during any period of the four years intervening from
14 the comments originally made, advised you to do thus and so, or
15 not to do thus and so?

16 MR. HAWTHORNE: No, they have not, sir. Neither has the
17 Little Hoover Commission, which also looks at our Commission.

18 SENATOR CRAVEN: Well, I think that that probably, by
19 virtue saying nothing, says a great deal. I just wanted to make
20 that point.

21 CHAIRMAN ROBERTI: Senator Beverly.

22 SENATOR BEVERLY: Along the same point, I have some
23 confusion on it.

24 I received a copy of the letter the FPPC Enforcement
25 Division wrote you in April, 1986, raising this possible conflict
26 issue. Do you recall that letter?

27 MR. HAWTHORNE: Yes, I do, sir.
28

1 SENATOR BEVERLY: Did they ever pursue you in terms of
2 charging a violation or anything of that nature after that 1986
3 letter?

4 MR. HAWTHORNE: No, sir, they have not.

5 SENATOR BEVERLY: Never have?

6 MR. HAWTHORNE: Never have.

7 CHAIRMAN ROBERTI: So the letter of April 23rd, '86,
8 from Mr. Brown, is the last contact you've had with the FPCC?

9 MR. HAWTHORNE: Yes, it is, Senator.

10 CHAIRMAN ROBERTI: Is there any opposition in the
11 audience?

12 SENATOR CRAVEN: Move the confirmation of Mr. Hawthorne
13 to the Floor.

14 CHAIRMAN ROBERTI: Senator Craven moves the confirmation
15 of Mr. J. Thomas Hawthorne to the California Transportation
16 Commission be sent to the Floor.

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Senator Petris. Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is four to nothing; confirmation is recommended
27 to the Floor.
28

1 Thank you very much.

2 MR. HAWTHORNE: Thank you, Senators.

3 (Thereupon this portion of the Senate
4 Rules Committee hearing was terminated
5 at approximately 2:35 P.M.)

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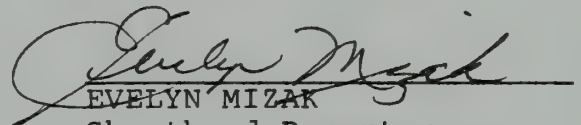
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17 2:15 P.M.
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26 Evelyn Mizak
27 Shorthand Reporter
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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ALBERT M. LEDDY, Member
Board of Prison Terms

EDWARD G. BREWER, Member
Youthful Offender Parole Board

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P R O C E E D I N G S

--oo0oo--

VICE CHAIRMAN CRAVEN: There being no objection on the part of my colleagues relative to beginning with Governor's Appointees, let's go then to Item Two, Albert M. Leddy, Member, Board of Prison Terms.

Good afternoon.

MR. LEDDY: Good afternoon.

VICE CHAIRMAN CRAVEN: Mr. Leddy, we ask all the Governor's Appointees to say in brief terms why they feel that they are qualified to hold the position to which they have been nominated.

MR. LEDDY: Well, first of all, I've held it for the last five years. I have been interested in the problems of crime and crime prevention for -- well, I started reading early when I was in high school on the subject. I became later a Deputy District Attorney, Assistant District Attorney, and District Attorney of Kern County for twenty-five years' experience. I had five years' experience in private practice to include defense of criminal cases as well as other matters.

I have done a good deal of investigation and research and study on the subject of what becomes of the people to whom we grant dates and the early life histories of people, the people that we talk to who have -- who are life prisoners, most of them sentenced for murder.

I think that that does qualify me.

1 VICE CHAIRMAN CRAVEN: Mr. Leddy, there obviously are
2 problems with the Board of Prison Terms, as there are problems
3 with every institution and board and commission that we have.

4 What, in your judgment, is the principle one which comes
5 to mind?

6 MR. LEDDY: Well, we have a volume problem, as everybody
7 does in the criminal justice system.

8 VICE CHAIRMAN CRAVEN: I see.

9 MR. LEDDY: And we've been approaching that by doing
10 half -- 50 percent more hearings on the life sentences, and a
11 very substantial increase in the number of -- we do also the
12 revocation hearings, which are mostly done by the deputy
13 commissioners. Their number of hearings has increased from three
14 per day to seven per day. So, we are attacking a serious volume
15 problem.

16 VICE CHAIRMAN CRAVEN: Are you doing this with the same
17 amount of staff that you used heretofore?

18 MR. LEDDY: There's a very small -- I mean, relatively
19 small increase. We are not tied to -- the Department of
20 Corrections and Paroles, which is a division of the Department of
21 Corrections, are tied to the population growth. We are not.

22 VICE CHAIRMAN CRAVEN: I see.

23 MR. LEDDY: So, we have, I think, four years, as I
24 recall, we had about 35; I think we now have 51 deputy
25 commissioners, and of course, the law does not -- or it more or
26 less requires that we do not increase the number of
27 commissioners. And two commissioners are required at each one of
28

1 the life hearings, so that we have now running, as I say, about
2 three hearings per day instead of two, which simply means we have
3 to work nights a little bit more.

4 VICE CHAIRMAN CRAVEN: I see. So you've just
5 implemented a greater approach to the problem at hand.

6 MR. LEDDY: Just more work.

7 VICE CHAIRMAN CRAVEN: Fine.

8 Any of the Senators have any questions? Senator Petris
9 does.

10 SENATOR PETRIS: Why did the public express a vote of no
11 confidence in November?

12 MR. LEDDY: I think that there was publicity put out, as
13 I understand it, that there were eight people who had committed
14 murders who were -- somehow later committed murder.

15 I ran a check. Our panel, people in our office have run
16 a check, and they never found eight murderers. I spent my
17 weekend, my Christmas vacation, going through the rap sheets of
18 136 people.

19 We've only granted 131 dates in the last six years, and
20 we got a sample, random sample, of 136. We only found one person
21 who was even charged with a murder. He was not returned to
22 custody. He was found mentally incompetent. We don't know what
23 the status of that case was. I'm going to have it pulled.

24 But, and so I think that there was a lot of feeling that
25 anything -- I think generally the things a lot of people think,
26 that nobody should ever get a date. And whenever I go around
27 socially in groups, and they say, "I hope you're not letting
28

1 anybody out." Well, we're really letting about four percent per
2 year, which is a very small percentage. It was fourteen percent
3 about six years ago, before I came to office.

4 SENATOR PETRIS: Who's putting out all this
5 misinformation?

6 MR. LEDDY: I don't know if it was -- I have no idea,
7 frankly. I really have no idea.

8 As I say, we -- our people did a real serious check, and
9 they could not find eight murderers who had subsequently
10 committed a murder.

11 SENATOR PETRIS: How about lesser crimes than murder.
12 When somebody is on parole and commits a crime, what is your
13 procedure when they come back? Do you immediately haul them
14 before the Board and read back their promises to you at the time
15 they were released?

16 MR. LEDDY: What happens, well, actually there's been a
17 substantial increase in the number of people returned, and this
18 is for several reasons. One, I think Paroles is becoming more
19 enforcement-minded. The police are getting more efficient, and
20 they're finding that 70 percent of the people who are in prison
21 are returned.

22 And to return them, they're entitled to a Morrissey
23 hearing that is a fair hearing. We have held hearings, 14,000
24 hearings last year. We also instituted, which has been going on
25 now for about four years, a screening process which helps to
26 expedite them. They, in effect, waive their hearing. We did
27 35,000 of those hearings.
28

1 So, they're all entitled to a hearing. If they waive
2 one, back they go. And there has been a substantial --

3 SENATOR PETRIS: You're talking about a hearing before
4 they're reincarcerated?

5 MR. LEDDY: Yes, the law requires that they do have
6 what's called a Morrissey hearing unless they waive it.

7 SENATOR PETRIS: That's following a complaint by the
8 parole officer, I guess, for a violation of parole?

9 MR. LEDDY: Yes.

10 SENATOR PETRIS: It usually means -- well, maybe not
11 usually, but it often means commitment of another crime.

12 MR. LEDDY: Yes, it could either be a technical
13 violation -- about half of them are returned for technical
14 violations, which could be anything from, you know, absconding,
15 not reporting -- and then you have people who test dirty on
16 narcotics, and you have people who, of course, do commit crimes.

17 There's a great many waivers of prosecutions in favor of
18 the parole people -- returning a person to prison because it
19 saves the tremendous expense in jury trials and costs of
20 prosecution, and sometimes uncertainty of a successful
21 prosecution.

22 SENATOR PETRIS: Did the Governor request reviews of a
23 lot of cases last year before this measure was passed?

24 MR. LEDDY: No, he really didn't. And to my knowledge,
25 he's not overturned anything that the Board has done.

26 SENATOR PETRIS: Well, he didn't have the authority
27 before.
28

1 MR. LEDDY: Well, he did have authority to return it to
2 us.

3 SENATOR PETRIS: He had authority to request a review
4 and return to it.

5 MR. LEDDY: Yes, but I don't believe he requested one.

6 SENATOR PETRIS: How about the year before?

7 MR. LEDDY: No, to my knowledge there have not been any.

8 SENATOR PETRIS: So where did all this information come
9 from during the election that the Governor was straining at the
10 bit? He was unhappy, and he wanted something to say about it.

11 MR. LEDDY: I think it was the Fain case, where --

12 SENATOR PETRIS: That's only one. Are there any others?

13 MR. LEDDY: Well, I don't know. Personally, I don't
14 know any of them. That's the one I've heard repeatedly.

15 I couldn't -- if anybody were to ask me, as you have
16 just done, at any time I could not recall one that he was
17 particularly concerned with. I think it was a general concern.

18 SENATOR PETRIS: Thank you.

19 VICE CHAIRMAN CRAVEN: Anybody else? Senator Mello,
20 Senator Beverly?

21 Any comment from anyone in the audience? There appears
22 to be none.

23 Senator Beverly.

24 SENATOR BEVERLY: Prepare to move the approval of the
25 appointment.

26 VICE CHAIRMAN CRAVEN: Senator Beverly moves the
27 confirmation of Mr. Leddy as a Member of the Board of Prison
28 Terms to the Floor.

1 No comment, call the roll.

2 SECRETARY WEBB: Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven.

9 VICE CHAIRMAN CRAVEN: Aye.

10 SECRETARY WEBB: Senator Roberti. Four to zero.

11 VICE CHAIRMAN CRAVEN: Thank you very much.

12 MR. LEDDY: Thank you, gentlemen.

13 VICE CHAIRMAN CRAVEN: Now we have Mr. Brewer with us,
14 Edward G. Brewer, Member, Youthful Offender Parole Board.

15 Mr. Brewer, we'll ask you, please, to tell us in brief
16 terms why you feel you are qualified for this important position.

17 MR. BREWER: First of all, Senators, I'd like to
18 apologize for being late. I was a across the street with Senator
19 Roberti, watching him. So, I was watching his move, and he faked
20 me out.

21 VICE CHAIRMAN CRAVEN: Well, that's almost like a divine
22 absolve, if you're with Senator Roberti.

23 (Laughter.)

24 MR. BREWER: The reason why I think that I'm qualified
25 for this position is, for the last five years, I have been in
26 this position on the Board.

27

28

1 Also, my background, I have background in education. I
2 also have a background in teaching as well as coaching, and
3 coaching takes a lot of philosophy, in my opinion. I have worked
4 with young people over the last fifteen years.

5 I am really the type of person that is very
6 compassionate when it comes to young people, because I think that
7 young people are able to change and are able to learn over the
8 years.

9 VICE CHAIRMAN CRAVEN: When we mention the term
10 "youthful" offender, what ages are we referring to?

11 MR. BREWER: Well, I have come across -- my youngest
12 ward has been 11 years old; my oldest ward has been over 25
13 because he has gone back out to court.

14 But when you talk about youthful offenders, we have some
15 sophisticated 14-15 year olds, and we also have some
16 unsophisticated 19 and 20 year olds.

17 VICE CHAIRMAN CRAVEN: I see.

18 MR. BREWER: So, we have to deal with each one
19 individually.

20 VICE CHAIRMAN CRAVEN: So they generally would run high
21 school age and, perhaps, a little beyond?

22 MR. BREWER: Yes, I would say so.

23 VICE CHAIRMAN CRAVEN: Very good, and this is the age
24 group that, I guess in the main, that you've had occasion to deal
25 with as an educator/coach; is that correct?

26 MR. BREWER: Yes.
27
28

1 VICE CHAIRMAN CRAVEN: And you feel that that experience
2 has given you a certain insight into the psyche of these people?

3 MR. BREWER: I think so. I've been doing it over a
4 period of years, and I do believe that I have some kind of
5 rapport with young people.

6 VICE CHAIRMAN CRAVEN: Very well, thank you.

7 Any questions by Members of the Committee? Is there
8 anyone in the audience who wishes to comment?

9 The Chair will entertain a motion.

10 SENATOR BEVERLY: Move the approval.

11 VICE CHAIRMAN CRAVEN: Senator Beverly moves that Mr.
12 Brewer's confirmation be recommended to the Floor.

13 Call the roll, please.

14 SECRETARY WEBB: Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven.

21 VICE CHAIRMAN CRAVEN: Aye.

22 SECRETARY WEBB: Senator Roberti. Four to zero.

23 VICE CHAIRMAN CRAVEN: The vote is four to zero; your
24 confirmation moves to the Floor.

25 Thank you very much, sir.

26 MR. BREWER: I want to thank you very much.

27 (Thereupon this portion of the Senate
28 Rules Committee hearing was terminated
at approximately 2:40 P.M.)

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOSEPH A. DUFFEL, Member
California Transportation Commission

JOHN T. KNOX, Lobbyist

SENATOR DAN BOATWRIGHT

RAY JAUREGUI, Member
Board of Prison Terms

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Next is Mr. Joseph Duffel, Member of the California Transportation Commission.

Former Assemblyman Knox is here to introduce Mr. Duffel.

MR. KNOX: Thank you, Mr. Chairman, gentlemen of the Committee.

It's my pleasure to introduce a fellow Contra Costan, Joe Duffel, for reappointment. He's here to be reappointed to the Transportation Commission.

I want to say that Mr. Duffel's been a very good friend of mine over many, many years. He's one of the finest citizens Contra Costa has to offer. He's been active in all of our charitable and other works. He's active in the community. He's a great contributor to our area there and is a very well-liked and very substantial citizen.

It's a great pleasure and an honor for me to appear to introduce him to you today.

CHAIRMAN ROBERTI: Thank you, Assemblyman.

Senator Boatwright is here.

SENATOR BOATWRIGHT: I want you to know that this man I've known a long time. And I want you to also know that he's a good Republican who gave \$1500 to my opponent in November, and even in spite of that, Joe Duffel, he's a Republican and he believes in it, and that's all right, because he's done a great job truly --

CHAIRMAN ROBERTI: You'd better say something good about him.

(Laughter.)

SENATOR BOATWRIGHT: Well, you know, it's a two party system. You started out as a Republican, and you saw the light.

CHAIRMAN ROBERTI: Don't remind me, yes.

SENATOR BOATWRIGHT: You switched, and I think one day Joe might switch.

But Joe Duffel, I've watched him work for years, of course, because we all have projects that we appear before the Commission on. And I have seen him deliberate.

And I want to take great exception to the article that's in the San Francisco Chronicle, where they at least infer that Joe Duffel votes for projects to benefit himself. That's the reason I came down.

I can absolutely tell you that that isn't true, because I know Joe Duffel as a man who has exceedingly high personal standards, and I've known him for thirty years. I've known him long before I was in politics. I've known him since I was on the city council, mayor in Concord. And I worked with Joe Duffel on local projects where, with city council people, the mayor had a say so. And many, many times in those projects, local projects, Joe Duffel gave a lot more than he had to.

So, when I read a story, as I did today in the Chronicle, that if it didn't say it directly it certainly inferred that he had voted simply to benefit his own cause. I want to tell you that Joe Duffel is not that kind of a person.

1 I think he's done a good job on the Commission, and I
2 would hope that you would reappoint him.

3 I mean, what the hell, he may even some day, before he
4 dies, see the light. But he's a good friend; he is a good
5 personal friend.

6 I just really resent these kinds of intimations. I'm
7 sure we've all gone through it with our friends, where newspapers
8 at least say things that appear on the face to be one thing, and
9 they're something else.

10 I would urge you today to approve the reappointment of
11 Mr. Duffel to the Transportation Commission. He's done a real
12 good job for the State of California. He is diligent. He
13 attends the meetings. He's interested; he does his homework, and
14 he should be reappointed.

15 CHAIRMAN ROBERTI: Thank you very much, Senator.

16 Are there any other witnesses in support of Mr. Duffel?
17 Is there any opposition in the audience?

18 Senator Craven.

19 SENATOR CRAVEN: Just a personal note, Mr. Duffel.

20 You attend Baylor University for a period of time, did
21 you?

22 MR. DUFFEL: Yes, sir.

23 SENATOR CRAVEN: In '41-42?

24 MR. DUFFEL: Yes, sir.

25 SENATOR CRAVEN: Do you remember the outstanding
26 fullback you had in those days?

27 MR. DUFFEL: Jack Wilton.
28

1 SENATOR CRAVEN: That's right, Jack Reverend Wilton.

2 MR. DUFFEL: Right.

3 SENATOR CRAVEN: Well, I went to a school that played
4 them in those days and beat them.

5 MR. DUFFEL: Was that Texas A&M or Texas?

6 SENATOR CRAVEN: No, sir, that was Villanova University.
7 In those days, Villanova College.

8 MR. DUFFEL: That's right.

9 SENATOR CRAVEN: Just a little school of 900 boys
10 against all you big Texans down there.

11 (Laughter.)

12 MR. DUFFEL: Yes, but we went to chapel a lot.

13 SENATOR CRAVEN: Not more than we did at Villanova,
14 believe me.

15 Well, I recall that very fondly. And then when I saw
16 that you were a Baylor person, at least in part, I just wanted to
17 mention that to you.

18 MR. DUFFEL: Thank you.

19 CHAIRMAN ROBERTI: Senator Mello.

20 SENATOR MELLO: Thank you.

21 Mr. Duffel, I just want to run through some questions as
22 I did of Mr. Hawthorne last week. I'm concerned, I think as you
23 are and others, about what's happening in our transportation
24 system, and especially the lack of funding and revenue. The STIP
25 program, the five-year plan, is now underfunded by some \$3.8
26 billion, and the total plan is way down. We need about \$20-25
27 billion. There's an unwillingness to really bite the bullet and
28

1 come up with ways in which it could be funded, other than the
2 Governor supporting a bond issue last year.

3 I asked Mr. Hawthorne if he would bring it before the
4 Transportation Commission. I think we're looking to you for
5 leadership. I get the impression you're looking to us for some
6 direction. We're looking to the Governor, and so far I think the
7 Commission, on which all of you have expertise, and the knowledge
8 of what the unmet needs are, should have some recommendations
9 that we would like to hear and the Governor would like to hear.

10 So, I would like to see it brought before the Commission
11 whether or not you agree that there's a shortage of funds, ways
12 in which we can address this, whether it be through gas tax
13 funds, sales tax, or bond issues, or what -- Mr. Bob Best just
14 came in here also -- because as people in Caltrans have indicated
15 to me, the deterioration that's happening on our highway system
16 now, once the wearing surface is eroded, we're going to have to
17 go in and reconstruct the base, and it's going to cost a lot more
18 money than to do it today.

19 I would just like to get your perception of whether or
20 not you're willing to join with the Commission and give us the
21 best of your recommendations on how we can meet this most serious
22 problem.

23 MR. DUFFEL: Mr. Chairman, first of all, may I
24 acknowledge the support that I've gotten from Mr. Knox and
25 Senator Boatwright. That was unexpected. They've served Contra
26 Costa County in a very distinguished manner for many, many years.
27 I'm pleased; I'm honored; I'm thrilled that they came over here
28

1 and made positive remarks. They were very generous, and I thank
2 them.

3 Now, Senator Mello, in answer to your question, we on
4 the Commission have been pointing out to the Legislature and
5 anyone that will listen for a long, long time that there is a
6 great, great need for additional revenue. The recent report that
7 we filed, the Commission filed, with the Legislature points that
8 out very strongly as well.

9 Now, as far as specific ways in which the monies should
10 be raised, whether it should be gas tax increase, whether it
11 should be bonding, or whatever, I as an individual would go on
12 record anywhere to say give us any of the revenue from any of
13 those sources, and we'll be very happy. But I also would go a
14 step farther and say that in my mind, there's absolutely no
15 question but that there should be a user tax, and it should be
16 increased immediately, and we should get on with the solution to
17 the problem.

18 SENATOR MELLO: The thing that becomes a little
19 disheartening, just your last statement there about a user tax,
20 last week when Senator Roberti and Senator Kopp unveiled a plan
21 that would tend to raise gas taxes by ten cents a gallon and
22 truck fees and others over a period of time, I think what I read
23 from the administration was a very fast and speedy rejection of
24 that program as far as raising the taxes.

25 The Governor's got great power. We've been sitting here
26 all these years wondering what's it going to take to get funding
27 for our transportation system.
28

1 The area I represent, as well as almost any area in the
2 State of California, is coming under very critical needs.

3 I appreciate your statement. I appreciate the support
4 you've given me when I come before the Commission, articulating
5 some of the needs I have in my district, which are many. But
6 we've reached a point where we're not doing much but just the
7 minimum amount of maintenance, and we have a long list of
8 projects that are bringing about gridlock, and safety, and
9 hazards.

10 So I just hope that what you just stated here to us,
11 that I appreciate, that you will become one of those leading
12 voices on the Commission to help address the need to the
13 Governor, and I hope that your influence on him would go a great
14 step into changing his direction and coming up with something
15 that all of us will want to support.

16 MR. DUFFEL: Well, we're very anxious. We recognize the
17 problem, we who work every day in the transportation business.

18 Transportation is very complicated. It takes a long
19 time to learn what's going on over there so that you might even
20 have an opportunity to make a difference.

21 But I think that the State is coming to the conclusion,
22 everyone is coming to the conclusion that something has to be
23 done. Even the individual counties are now passing half-cent
24 sales tax. I don't think there's any question but that something
25 has to be done, and something will be done.

26 But don't forget, we don't make policy for the
27 administration. That's really not our role. I wish it were.
28

1 SENATOR MELLO: Thank you.

2 CHAIRMAN ROBERTI: Senator Petris.

3 SENATOR PETRIS: We had a good talk this morning. I
4 wanted to ask you a question on two subjects. One is the freeway
5 expansion and so forth, elaborate a little bit on what Senator
6 Mello was talking about.

7 Is the Commission hueing to some particular policy
8 against increase in taxes? Are they flexible on it? Speaking
9 not of yourself only, but for the Board as a whole?

10 MR. DUFFEL: Well, I think that the Commission has taken
11 the attitude that it was up to us to disperse the monies after
12 recommendations from the local agencies and Caltrans, and referee
13 the ways in which the monies available would be dispersed,
14 whether it be federal or State. And it wasn't necessarily our
15 role to raise the money.

16 And we have, in our advice to the Legislature, we do
17 that in our annual report where we say there is a need for more
18 money, more money, more money, more money. But we have not
19 specifically pointed out what our recommendations would be,
20 because we didn't think that was our role.

21 I don't think there's any question but that we will
22 accept any money from any of the ways in which you gentlemen pass
23 the laws to raise it. And if you would like for us to give you
24 specific recommendations, and if we had a direction from the
25 Legislature to do that, I think that that would fall within our
26 power without running into problems with anybody else, or our
27 discretion, rather.

28

1 SENATOR PETRIS: Well, up to now you'd have problems
2 with the Governor. He's made it very clear, although this year
3 he's indicated he's going to take another look at it. He may
4 well support a gas tax increase, but he's vetoed bills.

5 He's forced us to go into bonds, which cost the people
6 one heck of a lot more money than pay-as-you-go on a sales tax or
7 gasoline tax basis. Some of us fought very hard against the bond
8 idea. Of course, the public rejected it by a very, very narrow
9 margin.

10 It just seemed to me that when you're appointed to such
11 an important role, and people throughout the state are
12 complaining about traffic congestion, and in the Bay Area it's
13 frequently cited in the last couple of years by the public in the
14 surveys that are made as the number one problem, even worse than
15 crime, and dope, and everything else. It seems to me when you're
16 in a position of that importance, that the public will look to
17 you for some leadership to be added to whatever efforts the
18 Legislature and the Governor are making. The public is going to
19 say, well, who decides where these freeways are going to be
20 built? The final word comes from you, even though Caltrans does
21 the planning and all that.

22 It seems to me that if you have strong feelings, both
23 individually and as a Board, they ought to be expressed one way
24 or the other, either in favor of more revenue, and a specific way
25 to get to that -- you know, the ways of getting there are very
26 narrow. Gasoline tax is the normal, natural way to go, but there
27 are others, I guess -- or, come out and say, "No, we've got
28 enough freeways. We've got to figure out something else."

1 MR. DUFFEL: Senator, I agree with you. And I am a
2 businessman who likes to get the job done, and it's very
3 frustrating for us not -- to be accused of being a do-nothing
4 Commission. That's not necessarily true, but we are anxious to
5 solve the problem, too.

6 I think that Mr. Robert Best is now in charge of
7 Caltrans. He's a very bright young man. I think there's
8 movement in the direction toward a solution to some of these
9 problems.

10 Money, though, in all areas of government is very hard
11 to find, and it's competing with education and all these other
12 things. But I think finally transportation doesn't have too much
13 glamour when it comes to competing for these dollars, but until
14 the situation gets so bad that there's movement.

15 And I think this year, there will be movement in all
16 directions towards the solutions to some of these problems,
17 because if we don't, the economy of the State's going to suffer
18 rather badly, and it's going to hurt everyone. So, I think that
19 the situation's gotten so bad now that there will be some
20 movement.

21 SENATOR PETRIS: Yes, but what we're afraid of is, it'll
22 be so bad there won't be any movement.

23 (Laughter.)

24 SENATOR PETRIS: The other question is the conflict
25 thing that we talked about. We went into this the first time
26 around. You happened to be in the good position of having made
27 good real property investments in Northern California. I don't
28 know if you have anything down south; I think it's all up north.

1 It seems to me that in those situations where you voted,
2 and some people say well, that helped you personally, those were
3 unanimous votes; they were consent calendar types of things, and
4 your vote wouldn't have made any difference one way or the other.

5 I would suggest it's probably better to abstain, not
6 because the result is any different, but it would probably be
7 better for you in the future by being more and more in the public
8 eye. As the pressure for more freeways is increased, and
9 widening, and everything else, there's going to be more focus on
10 your role.

11 I agree with you that you've got a consent calendar
12 situation; you have a consensus; there aren't any no votes;
13 what's the difference? But the perception's important, too.

14 MR. DUFFEL: I appreciate that advice.

15 And I think I've learned. I thought that I didn't want
16 to delay the meetings, and I didn't want to be accused of
17 showboating.

18 SENATOR PETRIS: I think it's necessary for your
19 interest to eat up a little time and do the abstention, or
20 whatever it takes.

21 MR. DUFFEL: Thank you.

22 SENATOR PETRIS: Thank you.

23 CHAIRMAN ROBERTI: On some of these accusations that
24 have been made on some votes, have you ever corresponded with the
25 FPPC as to what the propriety is for your voting on some
26 projects, which I'm not all that acquainted with, but I guess one
27 was an interchange that comes near a hotel which you own?
28

1 MR. DUFFEL: To answer your question, I have never
2 corresponded with the FPPC. I shall. I think that would be a
3 very good idea, just to have that on record.

4 As far as that hotel is concerned, I did vote, and as I
5 have said, I said to the newspaper reporter, I have a little
6 60-room motel in Napa. And at the time I voted, even though I
7 would have sold the motel long before the interchange is ever
8 built, I thought that the interchange would negatively affect the
9 motel because it would speed up traffic. As long as traffic was
10 slow, they'd have to stop and look at my motel. So, I didn't
11 think I had a conflict of interest.

12 CHAIRMAN ROBERTI: The other was a shopping center. I
13 guess you voted to widen the Nimitz Freeway, which is a few miles
14 north of the shopping center? How much further from the shopping
15 center was that project?

16 MR. DUFFEL: Well, I think it would be more than five
17 miles.

18 I have rather extensive holdings in the city of Newark
19 that front on the Nimitz Freeway. The Nimitz Freeway has been in
20 a horrible condition for the last five or six, seven years.

21 And I would like to have taken a strong leadership
22 position in trying to get some money to that Nimitz Freeway, but
23 I never lifted a hand because of the conflict of interest.

24 So, I pretty jealously -- zealously avoided that area.
25 I wasn't aware that I had voted within five miles on my property
26 on the Nimitz there.

27

28

1 CHAIRMAN ROBERTI: There are other projects, too, where
2 it appears that, at least according to some commentators, the
3 widening of the projects, or the implementation of the projects,
4 increase the value on some property that you own. I don't know
5 each specific case myself, and therefore it's difficult to make
6 an analysis of it as to whether that per se affects you as an
7 individual, or if it treats you no differently than the rest of
8 the public in the given situation.

9 MR. DUFFEL: I would suggest it would be the latter. It
10 treats me no differently than anyone else.

11 And also, I didn't originate any of these projects. Any
12 of the projects that come to us have been originated by the
13 regionals, and by Caltrans, and in most instances, the need is so
14 overwhelmingly great that it's not controversial. And I really
15 don't have too much to do except to go along with the majority,
16 or with the unanimous majority.

17 CHAIRMAN ROBERTI: There are about six or seven
18 projects. It would help me to know if those were controversial
19 or not: Highway 4 south of the Benicia-Martinez Bridge;
20 Livermore, which was a 150-acre site, to extend the BART line to
21 Livermore. Well, I guess you would almost have to extend the
22 BART line to Livermore at some point.

23 Well, I'm going to probably do the same thing I did with
24 Mr. Hawthorne. I want to investigate these more thoroughly.

25 I grant some of the projects, just on my own reading,
26 appear to be things that incontestably had to be done, making
27 your vote appear to be irrelevant -- but I don't want to say
28

1 irrelevant, but not a determinant -- as to the efficacy of the
2 project. But I do want to go over each one of these.

3 I will acquiesce to your name being presented on the
4 Floor, but I'm going to want to hold it up for a little while so
5 we can go over these. Hopefully there's no problem, and I think
6 that that would be good for you as well.

7 MR. DUFFEL: That's fine. I'd appreciate that, because
8 I don't think you'll find a problem.

9 CHAIRMAN ROBERTI: The point has been made; the
10 accusation's been made. It has made the press, and I think we
11 have a duty to examine it, as we're doing with Mr. Hawthorne.

12 That's my current observation on the matter for today.

13 Any other Member want to say anything?

14 SENATOR CRAVEN: Move Mr. Duffel's confirmation.

15 CHAIRMAN ROBERTI: Senator Craven moves confirmation.

16 SENATOR MELLO: Mr. Chairman.

17 CHAIRMAN ROBERTI: Senator Mello.

18 SENATOR MELLO: Did you want to hold him here in the
19 Committee or on the Floor?

20 CHAIRMAN ROBERTI: The problem with holding it in the
21 Committee is, we're really under the gun. Time is short.

22 I guess my preference would be to hold it on the Floor.
23 I know that removes it from our jurisdiction, but if there is a
24 conflict, I would suspect that would impress the membership on
25 the Floor.

26 SENATOR MELLO: We can always refer it back to
27 Committee, I guess.
28

1 CHAIRMAN ROBERTI: At that point, we could refer it back
2 to Committee.

3 But we do have to process these things; otherwise, we'll
4 just get a terrible backlog of Governor's Appointments.

5 MR. DUFFEL: You know, Senator, I certainly don't
6 object, because I have no conflict of interest.

7 But on the other hand, it outrages me somewhat that
8 conflicts of interest in these kinds of matters are put in the
9 paper as if I had one, because the world then says, "Rules
10 Committee Defers Approval, Alleging Conflict of Interest," and it
11 makes me look like a damn thief, and I don't like that.

12 CHAIRMAN ROBERTI: I understand the problem. Welcome to
13 the world of politics.

14 MR. DUFFEL: Excuse me.

15 CHAIRMAN ROBERTI: Do I hear a motion? Senator Craven
16 moved, all right.

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Beverly. Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is four to nothing; confirmation is moved to
27 the Floor.
28

1 We will examine in detail each one of these projects.

2 Thank you, Mr. Duffel.

3 MR. DUFFEL: Thank you, sir. Thank you, gentlemen.

4 CHAIRMAN ROBERTI: Mr. Ray Jauregui, Member of the Board
5 of Prison Terms.

6 Mr. Jauregui, we'll ask you what we ask all the
7 Governor's Appointees, and that is why you feel you're qualified
8 to assume this position?

9 MR. JAUREGUI: Well, to begin with, when I was 18 years
10 old, when I was drafted into the U.S. Army, I found myself being
11 trained as a forward observer, and then found myself in the
12 division assigned to General Patton's Third Army, where I saw a
13 lot of people lose their lives and was myself threatened, and
14 felt the anxieties of possibly dying.

15 In my turn as a forward reserver, I also was one of the
16 first three soldiers to liberate a concentration camp. We first
17 ran into a camp in Ordruff, where I saw the pits, the gas
18 chambers, the garages full of bodies. Three days later, another
19 concentration camp at Belsen, the same thing.

20 Six years after I got out of the service, I joined the
21 Los Angeles Police Department. And the last part of my career,
22 which was 22 years, I was a homicide detective and investigated
23 every type of murder there is, and got to talk to, you know,
24 relatives of victims, and even people that weren't exactly
25 killed, but part of our responsibility for being a homicide
26 detective was also to investigate assault with deadly weapons.

1 From there I went to the District Attorney's Office in
2 San Luis Obispo, where I served eight years. I headed the White
3 Collar Crime Division, but I also investigated and helped
4 investigate some murders. And there I also was involved in
5 freeing two suspects who had been arrested due to a language
6 barrier and were charged with homicides, and it gave me an
7 opportunity to get the other side of it, that not all persons
8 that are accused of crimes are telling lies.

9 I've been on the Board two months short of six years.
10 I've been involved in over 2,500 hearings. And in those
11 approximate six years, I have never been absent from work. I've
12 never been sick, and I've never been absent from work.

13 That background, I think, for this particular job is
14 probably as solid as any background that could attest to this
15 particular job that I hold.

16 CHAIRMAN ROBERTI: Thank you, Mr. Jauregui.

17 Is there any discussion or debate? Any questions?

18 SENATOR CRAVEN: Do you pronounce your name,
19 "Har-ray-gy" or "Jar-ray-gy"?

20 MR. JAUREGUI: Well, in Spanish it's "How-ri-gy", and in
21 English it's "Har-ray-gy" or "Hor-ray-gy". It's a Basque name.
22 My grandfather was a Basque.

23 SENATOR CRAVEN: Well, I know somebody in my hometown by
24 that name. I think he calls himself "Jar-ray-gy". I guess it's
25 easier. You don't have to explain.

26 MR. JAUREGUI: Well, he's not using the old Spanish with
27 the "J" as an "H"; that's probably why.

1 SENATOR CRAVEN: Yes. It's a very nice name.

2 MR. JAUREGUI: I love it.

3 SENATOR CRAVEN: You may be the only Basque in here
4 today.

5 MR. JAUREGUI: Right.

6 SENATOR CRAVEN: Do you have any questions?

7 CHAIRMAN ROBERTI: No, we're going to let you off easy.

8 SENATOR CRAVEN: Very well. If there be none, I would
9 like to move the confirmation of Mr. Jauregui to the Floor, Mr.
10 Chairman.

11 CHAIRMAN ROBERTI: Any discussion or debate? Any
12 opposition? Seeing none, the Secretary will call the roll.

13 SECRETARY WEBB: Senator Beverly. Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 The vote is four to nothing; confirmation is recommended
22 to the Floor.

23 MR. JAUREGUI: Thank you very much. I will continue to
24 do a good job; believe that.

25 CHAIRMAN ROBERTI: Very good.

26 (Thereupon this portion of the Senate
27 Rules Committee hearing was terminated
28 at approximately 2:30 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

20th day of January, 1989.


EVELYN MIZAK
Shorthand Reporter



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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RALPH R. PESQUEIRA, Member
Trustees of the California State University

HARVEY R. ZALL, State Public Defender

SENATOR ED DAVIS

MYRON MOSKOVITZ, Professor of Criminal Law
Golden Gate University

JEFF BROWN, Public Defender
San Francisco

HOWARD W. GILLINGHAM, Attorney
California Attorneys for Criminal Justice

ROBERT SULLIVAN, Attorney
Turner and Sullivan

MICHAEL WHITE, Attorney for Mr. Dahlberg

ROY DAHLBERG, Former Deputy State Public Defender

HONORABLE DAVID L. ALLEN, Judge
Tulare County Superior Court

MARK E. CUTLER, Former Deputy State Public Defender

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: We will now take up Mr. Ralph R. Pesqueira, Member of the Trustees, California State University.

Mr. Pesqueira, we'll ask you what we ask all the Governor's Appointees, why you're qualified to assume this position?

MR. PESQUEIRA: Thank you, Mr. Chairman and Senators.

My name is Ralph Pesqueira. I'm from San Diego, and I have been appointed to the Board of Trustees of the California State University system last April, and I've been serving in that capacity since that time.

I feel that I am qualified for this particular position because of my strong interest in education, especially in the State of California. I am a native Californian, born in Southern California, raised in Southern California, and educated in Southern California.

I now have a Mexican food business in the city of San Diego. It's a family business of just about fifty years of age, and I have ample experience dealing problems of business. I serve the City of San Diego as a Planning Commissioner, and sit on the Board of the Chamber of Commerce and various other committees, including the United Way. Had ample experience and ample exposure to the various problems of education. I sit as an advisor to the President of the San Diego State University system as well.

1 I feel that my background plus my strong interest in
2 education gives me ample qualification to serve the State of
3 California as a Trustee.

4 CHAIRMAN ROBERTI: Thank you very much, Mr. Pesqueira.

5 Are there any witnesses either in support or opposition
6 to the appointment?

7 Senator Petris.

8 SENATOR PETRIS: The system tells us you're going to
9 have to hire about 8,000 teachers in the near future.

10 MR. PESQUEIRA: That's correct, sir.

11 SENATOR PETRIS: What are the efforts being made to
12 recruit good teachers?

13 MR. PESQUEIRA: Every effort is being made that can
14 possibly be made. At this particular time, one of the things
15 that we are looking at very carefully, and that I am particularly
16 interested in, is making sure that those members of
17 under-represented areas are given ample opportunity and
18 encouragement to enter into the teaching profession.

19 As you say, we will be losing about 8,000 in the next
20 few years, and we do need to replace them. And especially in my
21 capacity as a Hispanic, I'm particularly looking towards the fact
22 that Hispanics will be taking up a large portion of this
23 population of the State of California, and I'd like to see many
24 more of those encouraged to enter into the system.

25 SENATOR PETRIS: Can you tell me what the University's
26 doing in that direction?

1 MR. PESQUEIRA: Specifically, sir, I can't answer that
2 question. I'm not involved in the actual hiring of any of the
3 teachers or in the policy making of that.

4 SENATOR PETRIS: How can you help as a Board Member?
5 You expressed a desire, which I share. What can you do?

6 MR. PESQUEIRA: The biggest thing that I can see right
7 now is that so many of our graduates are going into industry
8 rather than into teaching. One of the things we have to look for
9 is how we can encourage these graduates to move into teaching.

10 Obviously, a lot of people will say salaries are the way
11 to do it; lower class size is a way to do it; building more
12 institutions so that we can have those low class sizes would be
13 one way to encourage individuals to enter into that profession.

14 It's still a very honorable profession, and I don't
15 think that we have to sell that.

16 SENATOR PETRIS: But people aren't going into it.

17 MR. PESQUEIRA: That's correct, sir, because the
18 industry is grabbing them up as fast as they can. And part of
19 the reason for that is because industry can pay a whole lot more
20 than we can to our professors.

21 SENATOR PETRIS: But a youngster who is in high school
22 who's encouraged to going into teaching, and goes to a State
23 University and majors in education is not likely to be grabbed up
24 by industry; is he? What are they going to do with him?

25 MR. PESQUEIRA: No, they would not be. We just don't
26 have enough of them that are in that particular pipeline that
27 want to go into education.
28

1 SENATOR PETRIS: My question goes to that pipeline. Can
2 you walk me through a program or specific proposals to bring more
3 into that pipeline, other than the fond desire that you've
4 expressed.

5 MR. PESQUEIRA: Not at this time, sir.

6 SENATOR PETRIS: I should rephrase that. Other than the
7 fond, admirable desire that you've expressed, how do we get them
8 into the pipeline?

9 MR. PESQUEIRA: Thank you, sir.

10 I don't know that I can give a specific way for that. I
11 have an idea that one of the biggest reasons that we're not
12 getting more students into that area is partly because of the
13 cost of education. And it may be that the State of California
14 needs to look at some type of a program similar to -- well, to
15 illustrate it, like the NROTC program, where we can bring
16 students in and have them come into a contractual arrangement
17 with the State of California, whereby the State will pick up the
18 cost of their education in the system in exchange for so many
19 years of service, much like we do through the military academies
20 or through the ROTC system, and allow them to move into higher
21 degrees with the same type of contractual arrangement so that we
22 would be guaranteed that they would stay in the system, yet give
23 them a chance to get the higher degrees as they move through the
24 system.

25 SENATOR PETRIS: Can you do that under the present law,
26 or do you need a change in the law?

27
28

1 MR. PESQUEIRA: Sir, I'm not familiar with that. I
2 would presume that there is not a law that allows that.

3 I do know that we have a forgiveness program for the
4 graduate students.

5 SENATOR PETRIS: On the student loans.

6 MR. PESQUEIRA: On the student loans.

7 SENATOR PETRIS: So they may come back and teach at that
8 institution.

9 MR. PESQUEIRA: That's correct, sir. But I'm not
10 familiar with any other law on that.

11 SENATOR PETRIS: Well, I had a bill that would push all
12 this stuff, 2532 last year. The Governor vetoed it,
13 unfortunately.

14 I don't know if you were on the Board at the time or
15 not.

16 MR. PESQUEIRA: No, sir.

17 SENATOR PETRIS: I don't recall whether the Board took a
18 position on it one way or the other.

19 MR. PESQUEIRA: I'm not familiar with it.

20 SENATOR PETRIS: Well, I'd like to see you come up with
21 some practical specific program, either through the Board or a
22 recommendation to us, me in person specifically, to bring about
23 the results you're describing. I think we're in dire need of
24 that.

25 MR. PESQUEIRA: We definitely are.

26 SENATOR PETRIS: I think it needs to start at the high
27 school level to encourage bright youngsters there to go into
28 teaching.

1 MR. PESQUEIRA: That's exactly true, sir.

2 SENATOR PETRIS: Have there been any discussions of that
3 in any of your Board meetings?

4 MR. PESQUEIRA: No, sir, there have not been that I'm
5 aware of.

6 SENATOR PETRIS: How long have you been on it?

7 MR. PESQUEIRA: My first meeting was in, I think, May of
8 last year, and then we have our meetings every other month. So,
9 I've only been to a very few.

10 SENATOR PETRIS: Doesn't give you too much opportunity.

11 MR. PESQUEIRA: No, sir.

12 SENATOR PETRIS: Are you planning to acquaint your
13 colleagues on the Board with this desire and try to move them?

14 MR. PESQUEIRA: I've already done that, sir; yes, sir.

15 SENATOR PETRIS: What kind of response are you getting?

16 MR. PESQUEIRA: I've got to say that the response has
17 been interesting. I've received no negative response to it.

18 Primarily we've, in response to that, we move into areas
19 of the quality of the education and the profile of a university
20 graduate, and I'm getting some good responses on that. And I
21 hope to pursue that in the next few years.

22 SENATOR PETRIS: Thank you.

23 MR. PESQUEIRA: Thank you, sir.

24 CHAIRMAN ROBERTI: Any other questions? Is there any
25 opposition in the audience?

26 I'd just like to --

27 SENATOR CRAVEN: Mr. -- go ahead, Mr. Chairman.
28

1 CHAIRMAN ROBERTI: Senator Craven moves the --

2 SENATOR CRAVEN: Well, I do want to do that, of course.

3 CHAIRMAN ROBERTI: Yes, please.

4 SENATOR CRAVEN: I look upon Mr. Pesqueira as one of
5 mine since he comes from my area, and I look upon him as one of
6 my Trustees on the CSU system.

7 As you may have recalled his saying, he was educated in
8 Southern California, as he put it, but he's a graduate of the
9 system, the CSU system, the same system he presently serves. And
10 I think he serves it with a great deal of distinction and aplomb.

11 I've seen him work. By virtue of recent legislation of
12 my own, I've been involved with the Trustees, and he is a very
13 introspective gentleman who just doesn't take things on the
14 surface or pro forma. He's very, very diligent in his
15 investigation to get to the bottom of things and get things
16 straight. And he is also one who does not hide his light under a
17 bushel. He says what he feels, and his pronouncements invariably
18 cause the other Trustees to listen to what he has to say, because
19 he speaks with a considerable amount of authority.

20 He's a very well-respected man in the San Diego
21 community where, of course, he is best known. So it is with a
22 great deal of pleasure that I am moving his confirmation.

23 CHAIRMAN ROBERTI: Thank you, Senator.

24 Senator Craven moves confirmation.

25 Senator Petris.

26 SENATOR PETRIS: Yes, I'm sorry to take more time, but
27 there's a couple other things.
28

1 MR. PESQUEIRA: Yes, sir.

2 SENATOR PETRIS: Going now to the general student
3 population, not just the under-represented ones that you've
4 talked about. My information is that the percentage of students
5 who graduate is very small compared to those who enter, and it's
6 caused a lot of concern in a lot of circles.

7 In 1978, the entry class of 1978 graduated only 8
8 percent four years later. And the following year it went up to
9 25 because they stuck around to make up their deficiencies or
10 whatever it was. The maximum they reached after additional time,
11 not just the four years, was 50 percent.

12 Now, to me that is a very dismal record. We've been
13 beating the drums up here for education and everywhere else
14 around the state, and everybody says we've got to extend the
15 opportunities, choose the brightest kids. We have a Master Plan.
16 And you have only 8 percent finishing in the normal time.

17 I don't mind them finishing later on, just so they
18 finish.

19 Has the Board expressed any concern about that at all
20 since you've been there in May?

21 MR. PESQUEIRA: I sat through one meeting, sir, as an
22 observer when the Master Plan was being discussed, and I do
23 remember a figure that struck me tremendously, and that was that
24 we were, as you just said, one in five of students who enter the
25 university system are actually graduating.

26 That's about the extent of my exposure to that at this
27 point. We have not had any meetings, or I haven't sat on any of
28

1 the subcommittee meetings in which that has been discussed. I do
2 know it's a problem, however.

3 SENATOR PETRIS: Were the reasons given for the low
4 percentage at that meeting?

5 MR. PESQUEIRA: The biggest reasons that I have heard,
6 and I feel that I concur at this point with that, is that the
7 amount of students that are coming out of our secondary K-12
8 system are not really qualified to continue through the college
9 program. And that's something that we have to address as a
10 university system, but we also have to address as a population of
11 the State of California, to see to it that those K-12, that core
12 curriculum that is so vitally necessary to prepare those students
13 to go through a four-year system, is there so when they graduate,
14 they are coming out.

15 As a businessman, I am very much aware, and as a member
16 of the Chamber of Commerce, very much aware of the complaints
17 that businessmen have in the San Diego, and I'm sure this is true
18 all over the state, that students who graduate from high school
19 are not prepared even to enter into industry. Their very low --
20 very low amount of qualification on ability to do mathematics, or
21 reading, or just basic communication skills or thought processes
22 is very low. That must be looked at.

23 I was talking to Tom Paysant, Superintendent of City
24 Schools for San Diego. And San Diego this year is beginning to
25 implement a program in which the core curriculum is going to be
26 elevated. However, it is a problem because there are so many
27 mandated subjects that are handed down through both the State and
28

1 federal program which take up a considerable amount of time of a
2 teacher, and I think we may need to look at that and return to --

3 SENATOR PETRIS: Are they interfering with their
4 opportunity to learn how to read?

5 MR. PESQUEIRA: No, sir, they're not interfering with
6 that.

7 SENATOR PETRIS: Write?

8 MR. PESQUEIRA: No, sir.

9 SENATOR PETRIS: Do a little thinking?

10 MR. PESQUEIRA: The teachers feel that they're being
11 interfered with with their time that they need to work with
12 students to make sure they can read, write and think.

13 SENATOR PETRIS: Is that because of too many courses, or
14 the nature of the mandates?

15 MR. PESQUEIRA: The nature of the mandates more than
16 anything else, sir.

17 SENATOR PETRIS: What are those?

18 MR. PESQUEIRA: Primarily the areas in which the federal
19 government requires more courses be taught on human relations.
20 Not that those aren't excellent courses and good courses, but
21 when those courses are dropped into the curriculum, something
22 else has got to be pushed aside. And it's those core courses
23 that tend to take the brunt of the pushing.

24 And teachers find that, from the teachers I've spoken
25 to, that they have less and less time to be involved in
26 mathematics, or English composition, speech classes, and those
27 classes are very necessary.
28

1 SENATOR PETRIS: What percentage of the daily classes
2 are mandated by the federal government?

3 MR. PESQUEIRA: I could not answer that, sir. I don't
4 know.

5 SENATOR PETRIS: I thought that was a pretty small, very
6 low minimum, if at all.

7 MR. PESQUEIRA: Well, in talking to teachers, sir, they
8 express to me that it takes up a considerable amount of their
9 time.

10 SENATOR PETRIS: What else other than human relations?

11 MR. PESQUEIRA: I'm sorry, sir, I'm at a loss to go on
12 to that.

13 SENATOR PETRIS: But the impression you have is that a
14 lot of courses that interfere with their --

15 MR. PESQUEIRA: If I may back up on that. For example,
16 the latest one that just came out is the the necessity of
17 teaching students the problems of AIDS. Now, we know that that's
18 very important, but this takes up a considerable amount of time.
19 And it's brand-new. It's dropped right into the lap of a teacher
20 who may have already had a lesson program set up in which more
21 time was going to be given to core classes, now has to take away
22 from that core class time in order to go into a class on AIDS, or
23 on abortion, or on pregnancy.

24 SENATOR PETRIS: Is that a federal mandate?

25 MR. PESQUEIRA: I'm not sure on that, sir.

26 SENATOR PETRIS: I don't think it is. We had a hard
27 time trying to get that passed in this Legislature. I don't
28 think we ever made it.

1 We had a bill that says you've got to show a movie.
2 That's once a year, and that didn't pass.

3 So, I don't know where all this stuff's coming from.
4 Are you sure it isn't the local school board?

5 MR. PESQUEIRA: Could be, sir.

6 SENATOR PETRIS: Well, I would examine that. The
7 teachers are complaining about programs of the local board, then
8 they ought to deal with it locally. I don't think that you'll
9 find that we're cluttering it up from here.

10 MR. PESQUEIRA: I'm glad to hear that, sir.

11 SENATOR PETRIS: Thank you.

12 MR. PESQUEIRA: Thank you.

13 SENATOR BEVERLY: Along that line.

14 CHAIRMAN ROBERTI: Senator Beverly.

15 SENATOR BEVERLY: What is the percentage of entering
16 students at the university who graduate? Does anybody know?

17 SENATOR PETRIS: No, but that record isn't much better.
18 It's better, considerably better, but it's not anything to scream
19 about.

20 First of all, the drop off is very high; I've forgotten
21 the numbers. And second, the ones the finish at the normal
22 four-year period is shockingly low even there.

23 MR. PESQUEIRA: That's true.

24 SENATOR CRAVEN: That's got to become a way of life.
25 When those of us, and we are generally contemporaries, Nick and I
26 certainly are, everybody went to school for four years. That was
27 just common place. And if you took longer, they kind of looked
28 askance at you.

1 MR. PESQUEIRA: It's true.

2 SENATOR CRAVEN: I suppose, I don't know how far the
3 statistics go back, but there was a period of time -- let's put
4 it this way. The further you get from the cessation of the
5 Vietnam War, the more people you're going to have go to school
6 and stay in school. There were a lot of people who went to
7 school as sort of a barrier against, you know, fighting.
8 Understandable, but not necessarily appreciated by anyone; not
9 me, anyhow.

10 We old veterans don't go for that.

11 SENATOR BEVERLY: You didn't mention me. Am I older or
12 younger?

13 (Laughter.)

14 SENATOR CRAVEN: Well, you are younger than both Senator
15 Petris and myself, and I put you in a separate category, which
16 you rightly deserve.

17 CHAIRMAN ROBERTI: There is a motion before us.

18 I'd also like to mention that, besides Mr. Pesqueira's
19 excellent qualifications, that this is, I think it's safe to say,
20 a response on the part of the administration to the request that
21 more Hispanics be appointed, and the Governor has appointed a
22 very fine person who happens to be Hispanic to this important
23 position.

24 MR. PESQUEIRA: Thank you, sir.

25 CHAIRMAN ROBERTI: Secretary will call the roll.

26 SECRETARY WEBB: Senator Beverly.

27 SENATOR BEVERLY: Aye.
28

1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: Aye.

3 SECRETARY WEBB: Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is five to nothing; confirmation is recommended
10 to the Floor.

11 MR. PESQUEIRA: Thank you, sir.

12 CHAIRMAN ROBERTI: Thank you.

13 (Thereupon the Senate Rules Committee
14 took up legislative agenda items.)

15 CHAIRMAN ROBERTI: Next is the appointment of Mr. Harvey
16 R. Zall, State Public Defender.

17 SENATOR DAVIS: Mr. Chairman, may I make a very short
18 statement?

19 CHAIRMAN ROBERTI: Yes, please do.

20 Senator Davis is here to introduce Mr. Zall.

21 SENATOR DAVIS: As Vice Chairman of the Senate Judiciary
22 Committee for the last -- this is now my ninth year, I've
23 observed a lot of witnesses representing various factions of the
24 people we have to listen to to give a 360 degree slant on things.

25 Incidentally, Senator Lockyer couldn't be here today,
26 but he tells me he joins in my appropriate comments. I'll try to
27 tell you where I go beyond where Bill might, and I'm speculating
28 on my own.

1 Harvey Zall showed up, as I recall, in about the year
2 1985.

3 CHAIRMAN ROBERTI: Can you excuse me one second,
4 Senator?

5 There's a request that photographs be taken. Any
6 objection? Hearing none, such will be the order.

7 Senator Davis.

8 SENATOR DAVIS: I was extremely impressed with the
9 professionalism, the excellent knowledge of the law, the clear
10 manner in which he expressed himself on matters that related to
11 the defense of individuals charged with crime, and of course, his
12 responsibility being this office, the responsibility being the
13 appellate appeals. Probably more than any other representative
14 who normally is recommending against the kind of bills that I
15 carry, I was extremely impressed with Mr. Zall.

16 Senator Lockyer joins me in that, and I think and I just
17 hope that he is confirmed.

18 Now, I'm going to depart on my own because I haven't
19 discussed this part of it with Senator Lockyer, the Chairman.

20 But I understand there's some criticism of Mr. Zall's
21 executive or administrative ability. And just let me say this
22 about that. I think the most fundamental thing in operating that
23 office is the person be sound in the law and professional in his
24 presentation of that. And I think that my own experience, having
25 been what I think is an excellent administrator and executive --
26 and not many people have had that experience to be able to say
27 they've done that -- I think I did it, and I did it well. I
28 think I'm a fair judge of what I'm going to say.

1 I think most Governors and most Presidents and many
2 mayors get to their office without much experience as an
3 executive or an administrator. And they generally do in that
4 area, not of their philosophy or their objectives, but in their
5 area of administration, the handling of personnel and so forth,
6 they're imperfect. I think that includes many people all of us
7 have known who run the State of California. They're deficient.

8 Mr. Zall might have some deficiencies in that area, but
9 I think it's important to remember that his knowledge and
10 standing up for the law in the area that he does as the State
11 Public Defender, his knowledge of the law is excellent, and I
12 think all of us can learn. I'm certainly still learning after
13 nine years to be a State Senator, and I think his administrative
14 abilities will improve as time goes on.

15 So, I commend to you the endorsement of Harvey Zall for
16 the office of State Public Defender.

17 CHAIRMAN ROBERTI: Thank you very much, Senator. We
18 appreciate your words.

19 Mr. Zall, before we get to your testimony, do you have
20 any other witnesses who would like to speak?

21 MR. ZALL: Thank you, Mr. Chairman and Senators.

22 My understanding is that Senator Keene was scheduled to
23 be here. He may well be on his way. I do have a number of
24 witnesses that, in some instances, have traveled long distances.
25 They are here to offer testimony.

26 And what I would beg your indulgence is to make an
27 opening statement.

1 CHAIRMAN ROBERTI: Very fine. I'll let you do that.

2 MR. ZALL: Before I do so, I'd like to thank Senator
3 Davis for his kind and generous remarks, for the regards
4 expressed on my behalf by Senator Lockyer.

5 Good afternoon. With your permission, I'd like to make
6 an opening statement.

7 Some ten months ago, the Governor appointed me State
8 Public Defender. Today I come before you, seeking support for my
9 confirmation to that position.

10 It is no secret that the State Public Defender's Office
11 has been a troubled agency. You may, perhaps, be aware of some
12 of our troubles from media accounts or other sources.

13 Many of the problems plaguing this agency, however, are
14 of long, indeed, very long standing. And frankly, some of the
15 problems are deep-seated.

16 It was and remains my considered judgment that prompt
17 action and significant changes were imperative to address these
18 problems so as to ensure the continued vitality of this agency,
19 and to lay a foundation for revitalization and growth of the
20 Public Defender's Office.

21 Change, especially in a state bureaucracy, is often
22 unwelcome. I expected and, in truth, encountered resistance and
23 opposition. A Renaissance thinker aptly observed of change:

24 "There is nothing more difficult
25 to take in hand, more perilous to
26 conduct, or more uncertain in its
27 success than to take the lead in
28

1 the introduction of a new order of
2 things because the innovator has
3 for enemies all those that have done
4 well under the old conditions, and
5 lukewarm defenders in those who may
6 do well under the new. This
7 coolness arises partly from the fear
8 of opponents who have the laws on
9 their side, and partly from the
10 incredulity of men ..."

11 and I should say women; that's my addition,

12 "... who do not readily believe
13 in the new things until they have
14 long experienced them."

15 Let me, if I might, take a minute to outline briefly
16 some of the more serious problems I inherited and the actions I
17 have taken to address them. Collectively, these problems
18 involved: a, high vacancy rate; b, low productivity; c, staff
19 accountability; and unrepresentative workforce.

20 High vacancy rate. When I took office in March, some 25
21 percent of the authorized attorney positions in this agency were
22 unfilled, and in some instances had been vacant for up to 18
23 months.

24 Despite pronouncements that it could not be done, I
25 promptly instituted an aggressive recruitment campaign which
26 produced over 400 applicants for the approximately 15 vacant
27 attorney positions. Many of the candidates possessed incredibly
28

1 impressive qualifications, a virtual embarrassment of riches.
2 And in case you'd like to see the resumes, I've got them here.
3 And we have filled virtually all the positions with a just a
4 couple of offers outstanding. These new staff, I'm convinced,
5 will, as it were, act as a tonic to a somewhat sluggish patient.

6 Productivity. This agency has long been troubled by low
7 productivity. My two immediate predecessors grappled with this
8 vexed issue.

9 Shortly after I took office, I signed a contract with
10 the National Center for the State Courts for a much needed
11 workload study of this agency. Their report and recommendation
12 is now near completion, and I am determined to implement their
13 suggestions.

14 In the meantime, I have reiterated and implemented a
15 long-standing but often ignored office policy regarding work
16 assignment and brief production. All attorneys now have work
17 plans to ensure appropriate case assignments and orderly and
18 reasonable progress toward brief production.

19 C, staff accountability. I have sought, and to some
20 extent succeeded, into introducing a long overdue degree of
21 organizational and administrative rationality into the running of
22 this agency. For example, I have put an end to the long-standing
23 agency practice of allowing attorney staff to work at home
24 unsupervised. This is, in my judgment, not an appropriate
25 practice for a law office, let alone a public agency.

26 Also, I have changed or abolished other, in my judgment,
27 dubious personnel practices. Such actions on my part have not
28 been uniformly popular.

1 D, minority recruitment. Finally I have made a
2 determined effort to recruit and hire minorities in this agency.
3 The pious platitudes of past agency administrations yielded
4 dismal results. I am working with Black Advocates in State
5 Service and other organizations to bring more minorities into the
6 agency to make our workforce more representative. In the current
7 hiring cycle so far, I have: hired three under-represented
8 minority attorneys; made job offers to another three; and have
9 two other minority applications under consideration.

10 The actions I have taken and the decisions I have made
11 are motivated by my strong desire to have this agency become an
12 integral element of and play a vital role in the system of
13 appellate criminal justice. I assure you, despite what some of
14 my critics have said and insinuated, I am fully committed to the
15 well being of the agency in particular, and the defense function
16 in general.

17 I possess, I believe, the necessary energy, industry,
18 intelligence, lawyering skills, and with, perhaps, just a little
19 bit of work, administrative capacity to resolve the agency's
20 problems and lead it forward.

21 I am gratified and humbled by the strong expression of
22 public support I have received from a very broad cross-section of
23 the judiciary, the defense bar, and community organizations. You
24 have in your file those letters of support. Indeed, last week it
25 was reported that the Presiding Justices of all six Appellate
26 Judicial Districts, and the Judicial Council, support the
27 continued existence of the State Public Defender. Justice
28

1 Eagleson was quoted as saying, on behalf of his colleagues on the
2 Supreme Court:

3 "Supreme Court Justices felt it
4 was best to leave things as they
5 were to see if Harvey Zall could
6 turn things around."

7 I regard these statements as a vote of confidence in me and my
8 administration of this office.

9 Finally, I must tell you my son, a law student at my
10 alma mater -- with all due respect to you, Senator Petris --
11 Boalt Hall, knowing something of the hubbub, sent me a Boalt Hall
12 sweat shirt and urged me to wear it today. I have chosen to wear
13 somewhat more conventional attire, but I have a sweat shirt here
14 with me of our law school, "The Timorous Should Stay at Home."

15 Not being timorous, I am here today and not at home to
16 answer your questions, to respond if necessary to my critics, and
17 accept with equanimity your judgment.

18 Today I have personally present or on call to testify on
19 my behalf: Judge David Allen, Superior Court of Tulare County;
20 the Honorable James Long, Judge of the Superior Court of
21 Sacramento; the Honorable Ronald Tochtermann, Judge of the
22 Superior Court of Sacramento County; John Virga, an attorney at
23 law in Sacramento; Donald Heller, attorney at law in Sacramento;
24 Richard Walker, the former federal Public Defender; Ken Wells,
25 the Public Defender of Sacramento County; Jeff Brown, the Public
26 Defender of San Francisco; Jerry Enomoto, representing the Asian
27 Pacific American Coalition; Myron Moskovitz, Professor of Law at
28 Golden Gate University.

1 I would like, with your indulgence, to call
2 Mr. Moskovitz, and then Jeff Brown, to make a few remarks, and
3 then hold the others, if necessary, for rebuttal.

4 CHAIRMAN ROBERTI: Very good.

5 Mr. Moskovitz.

6 MR. MOSKOVITZ: Thank you, Senator Roberti.

7 As Mr. Zall indicated, I'm a law professor at Golden
8 Gate University in San Francisco, where I teach criminal law,
9 criminal procedure, and appellate advocacy.

10 I'm also an elected official in the city of Berkeley,
11 thanks to Senator Petris' endorsement on the school board there.

12 I have had dealings with the State Public Defender's
13 Office for years, ever since it was founded in the 1970s.

14 CHAIRMAN ROBERTI: In other words, you couldn't possibly
15 be a right-wing Republican.

16 (Laughter.)

17 MR. MOSKOVITZ: Well, I thought once I said I was an
18 elected official in Berkeley, that was pretty clear.

19 (Laughter.)

20 MR. MOSKOVITZ: In any event, the quality of the work
21 done by the State Public Defender throughout my contact with it
22 has just been terrific. The lawyers are very good. They do an
23 excellent job in writing briefs and arguing cases.

24 In addition, they do something else. They provide a
25 service for all California attorneys who get involved in criminal
26 cases. And I don't mean just those who do it for a living, but
27 those who occasionally get a criminal case and need some help.

1 The State Public Defender's Office has run training programs.
2 I've participated in a lecture at one of their training programs,
3 which Harvey set up, by the way, when he was a Deputy Director of
4 the program. They put out training manuals that lawyers use,
5 I've used, dealing with sentencing and other practices that are
6 just terrific.

7 So, it's an agency that goes beyond simply representing
8 criminal defendants. It's an essential agency, and I would hate
9 to see the state lose it.

10 But my fear is that if things go the way they had been
11 going before Harvey came on, it'd be just a matter of time before
12 the State agency would be lost. The prior State Public
13 Defenders, and I've known all of them, were wonderful people,
14 wonderful lawyers, but I think they all had some shortcomings as
15 administrators. And the best proof of that has been the low
16 productivity of the office.

17 When this program was initially set up under the Brown
18 administration, it was expected to take a large portion of the
19 criminal appeals, and that hasn't happened. The percentage of
20 appeals they handle is a tiny fraction of the number coming
21 through the pipeline.

22 I looked at some figures a couple years ago that
23 indicated that, putting aside death penalty cases, which are
24 extremely expensive, but putting those aside, the average cost of
25 the State Public Defender for handling an appeal was in the
26 neighborhood of \$20,000 just for that office. Meanwhile, the
27 private attorneys that were handling criminal appeals,
28

1 independent of the State Public Defender, the average cost was in
2 the neighborhood of \$1500.

3 I talked to the State Public Defender who was in charge
4 at that time about this, and I told him, "You know, it's just a
5 matter of time before somebody, some Legislator, some newspaper,
6 gets wind of this and starts to go after your office. And you
7 can defend that 20,000 figure all you want and try to explain
8 that you provide higher quality representation, you have a better
9 chance of getting an acquittal, and the response is going to be,
10 'Who cares?' Does the public really want to see more acquittals
11 or more reversals? You know, you're an agency that's doing
12 something that's necessary but not terribly popular. And if
13 whoever it is that gets on this soapbox and starts talking about
14 this 20,000 versus 1500, urges the demise of your office loudly
15 enough, they're probably going to get it. And I would hate to
16 see that happen."

17 And I think until Harvey came along, this office has
18 been a sitting duck, just ready for that kind of an attack.
19 Harvey is the first administrator of that office that has tried
20 to do something about that productivity problem. I mean, the
21 productivity has been such that attorneys in that office were
22 taking a new case on the average of every two months, six new
23 cases a year.

24 Now, I do appeals myself part-time; I teach full-time.
25 And, you know, I've had some experience and I know some criminal
26 law, but I can tell you myself, it just doesn't take that long to
27 do a good job for a client. And I don't know the reasons for
28

1 this. I mean, Harvey has alluded to some of them: people
2 working at home, phone calls. I don't know the details of it
3 all.

4 I just know the bottom line. The bottom line of \$20,000
5 a case, one new case every two months, is unacceptable. It's
6 unacceptable -- it'd be unacceptable in private practice if I had
7 to bill a client for that kind of work on an opening brief or
8 even the rest of it, and it's certainly unacceptable in a State
9 agency that's spending taxpayers' money. And Harvey is committed
10 to doing something about it.

11 Now, naturally, whatever measures he's going to take to
12 do something about it are going to ruffle some feathers and cause
13 some resentment in the program. The lawyers that have been doing
14 whatever they've been doing that resulted in that high cost
15 aren't going to like the change. And I think that's where most
16 of the criticism is coming from.

17 But I think that's inevitable, and something we're going
18 to have to put up with if we're going to save this agency,
19 because if we don't do it, these lawyers who want to save the
20 agency are going to lose it.

21 So, let me just say a couple words about Harvey, and
22 then I'll end this.

23 I've known Harvey for years. We went to high school
24 together; we went to law school together. I've kept in touch
25 with him over the years when he's been a D.A., when he's been a
26 Public Defender, and he's an excellent lawyer. He understands
27 criminal law. He advocates well, and he's committed to good
28

1 representation. And I know some of the criticism has questioned
2 that. I can just tell you from my own experience, it's not true.
3 He's committed to the best possible representation.

4 And he knows and I know that the best possible
5 representation does not mean sticking in a brief every
6 conceivable, far-out argument that you could think of in a case.
7 And I think some of the low productivity stems from that
8 attitude.

9 My own feeling, and I wrote a book about this that
10 they're now using in the office, is, you don't win cases that
11 way. You lose cases. You don't bore judges with far-out
12 arguments that don't have a chance. You try to winnow it down to
13 something that's going to work.

14 Anyway, Harvey understands that. I think that kind of
15 an attitude is consistent both with good representation, with a
16 high likelihood of winning, and saving the taxpayers some money
17 and saving that office.

18 So, I strongly urge you to confirm Harvey Zall.

19 Thank you.

20 CHAIRMAN ROBERTI: Thank you very much, Mr. Moskovitz.

21 Senator Petris.

22 SENATOR PETRIS: Professor, are you familiar with the
23 critical report filed by the criminal bar?

24 MR. MOSKOVITZ: I've seen some of the correspondence,
25 yes.

26 SENATOR PETRIS: I'm sure Mr. Zall will give a response,
27 as I believe he's done in writing, I know he's done in writing.

1 I'm wondering if you're familiar with it and you'd care
2 to comment. The criticism from that group includes attacks on
3 administrative ability, on destruction of morale, on driving out
4 some of the top people, on failure to cooperate with the private
5 bar on the outside.

6 In recognition of the point you made that this office
7 really serves a much broader purpose than the individual clients,
8 there's a comity, you might say, in the entire defense bar
9 sharing information, which is helpful to all of them.

10 If you are familiar with the report, rather than have
11 Mr. Zall do all the answering, if you'd care to comment on any of
12 those points, it would be good to hear it, unless you want to
13 wait until they're made.

14 MR. MOSKOVITZ: Well, I can comment on a couple of them,
15 just briefly; not all of them.

16 I think that the morale thing is because Harvey is
17 making some changes over the ways things were done before. And I
18 think some of these attorneys in the office just had the attitude
19 that they're working for the State, they get their check every
20 month, and they're just not accountable in terms of productivity.
21 They're accountable to their clients; they try to do their best
22 for them, and I don't quarrel with their efforts along those
23 lines. But Harvey's trying to make some changes that do make
24 these people accountable to the taxpayers, too, and it's an
25 effort to save the office.

26 And I think these people just don't understand that,
27 because prior heads of the office just didn't look at it that
28

1 way. They didn't require that kind of productivity, or if they
2 did send out a few memos on that, and there were a few, they
3 didn't follow through and make it happen. And Harvey's trying to
4 make it happen.

5 And I can understand why these people are resentful of
6 that. You know, they're not administrators. These are people on
7 the firing line who are concerned about their cases, and they
8 don't have to deal with the Legislature; they don't have to deal
9 with the Governor's Office; they don't have to deal with the
10 budget.

11 But Harvey does. He's in charge of the office. He's
12 got to be accountable; they don't. But he's trying to make the
13 whole office accountable, and some people are upset by it.

14 And of course, the people that left were the people that
15 were most heavily involved in that, the people who'd been in the
16 office for a long time under those prior procedures where the
17 productivity was so much below what the Legislature had expected
18 when they set up this office.

19 SENATOR PETRIS: Thank you.

20 CHAIRMAN ROBERTI: Thank you again, Mr. Moskovitz.

21 Mr. Brown.

22 MR. BROWN: Thank you, Senators.

23 I would like to confine my remarks to what I know about
24 Harvey Zall as a person. I'm not familiar with some of the
25 internal controversies surrounding the office.

26 But I have had, over the years, the opportunity to come
27 to know Mr. Zall, and I would like to be able to comment; I am
28

1 able to comment, I think, on his intellectual capacity, his
2 capacity as an attorney, and his commitment to the ideals of
3 criminal defense.

4 In all of those respects, Mr. Zall is a man of extreme
5 qualification. He's highly well-educated. He has a deep
6 grounding in the field of criminal law, and particularly criminal
7 defense. He is a person that is committed to the generic Bill of
8 Rights freedoms that we enjoy, and we must defend, and which have
9 been defended before these committees over the years.

10 He is -- he broaches no -- he is not diffident to assert
11 himself in the defense of those rights and fighting legislation
12 that may be unpopular to the cause which may be, at times,
13 unpopular.

14 He is an individual that is determined to see that the
15 Public Defender succeeds as an institution. We've spoken at some
16 length about this in the last few months, and he believes that
17 the Public Defender's Office, the State Public Defender's Office
18 is really essential for the adequate representation of the
19 indigent accused at the appellate level.

20 He is also determined to bring about affirmative action
21 within the office, and I know that this has been a problem. In
22 fact, it's a problem in every Public Defender office in the State
23 of California. But he, sui responde, has taken it upon himself
24 to see that that office is representative or more representative
25 of the great clientele that he serves.

26 I have not had the opportunity, because I am not
27 associated with the office, to familiarize myself with some of
28 the personnel issues that Senator Petris alluded to.

1 I can just say that, being an administrator, it is
2 sometimes very, very difficult. Sometimes you make choices that
3 are unpopular; sometimes they're controversial. But you cannot
4 fail to make the choices. You cannot back away from decisions.
5 You're going to be criticized, but you have to have the courage
6 to act, and you have to have the decisiveness in order to be an
7 adequate administrator and a leader within an organization.

8 And Mr. Zall has, in fact, made those choices. There is
9 nothing that I have seen that would indicate that he's operating
10 except from the highest of motives. I think his good faith is
11 totally clear. He is not vindictive, as some people may say.
12 He's just trying to be responsible to his clientele and to the
13 obligations of his office.

14 He looks at his office as a trusteeship that must be
15 handled carefully, which must be stewarded adequately, and I have
16 no doubt that if he is confirmed by the Senate of the State of
17 California, that he will be faithful to his obligations, both to
18 his clients and to the State of California.

19 CHAIRMAN ROBERTI: Thank you, Mr. Brown.

20 MR. BROWN: Thank you.

21 CHAIRMAN ROBERTI: Is there opposition in the audience?
22 Please come forward.

23 MR. ZALL: Do you want me to stand down, Senator?

24 CHAIRMAN ROBERTI: You usually get to stay here while
25 they're saying things about you.

26 MR. ZALL: I stay at the table?

27 CHAIRMAN ROBERTI: Yes, you stay at the table.
28

1 MR. ZALL: Right.

2 (Laughter.)

3 MR. ZALL: I'm not timorous.

4 CHAIRMAN ROBERTI: No, you're not timorous.

5 MR. GILLINGHAM: Senator, I said to myself as I was
6 sitting out there, if nothing else I wanted to look each one of
7 you in the eye and slow down. I take it real seriously, what
8 we're doing here today. I hope you know that.

9 Howard Gillingham is my name. I'm a member of the
10 California Attorneys for Criminal Justice.

11 I want to say something first because I don't want to
12 forget it. I've testified up here before, not before this
13 Committee, but I have never come, quite frankly, with such
14 negativity. And I don't like that feeling at all. I don't like
15 it at all.

16 So, I want to apologize, and I want to apologize to the
17 people, Senator Davis and other ladies and gentlemen that are in
18 the audience who have come and, I believe, in the best of faith
19 to be counted, as it were, on behalf of Mr. Zall.

20 So, I am sensitive as I sit here and engage in what
21 certainly could be called an attack, I suppose, but I hope it
22 won't be characterized as such, on Mr. Zall, and I'm afraid that
23 it would even reflect, to a degree, on people that I know and
24 respect, so I feel badly about that. I feel very badly about
25 that.

26 But as Mr. Zall said, this is not the place to be shy,
27 and so I won't be shy.

28

1 Gentlemen and ladies of your staff, what this hearing is
2 about is rhetoric and posturing versus what is the record.

3 The California Attorneys for Criminal Justice, as some
4 of you perhaps already know -- I know you've received letters
5 from myself as well as others -- but let me just in brief tell
6 you that: it's about 2,000 members, a little more, criminal
7 defense of California; committed strongly to education of the
8 defense bar, the effective representation of people accused of
9 crime, trial and appellate level, federal and state, nondeath and
10 death cases across the board.

11 I mention briefly my own situation that I bring to the
12 CACJ committee that I chaired. I served on the committee in Los
13 Angeles, appointed by the Board of Supervisors, that screened and
14 then made recommendations as to the -- what we call the second
15 Public Defender in Los Angeles. There were five members
16 statewide, a couple judges; I was one of those.

17 I served on the Federal Practice Standards Committee.
18 You may recall, the lawyers among you and perhaps even the
19 nonlawyers, a couple of years ago the Chief Justice Burger
20 suggested that federal practice was abysmal. He suggested we
21 ought to have pilot districts to study that. I served on that
22 committee.

23 I presently serve on the committee that screens
24 applicants to take appointed cases in Los Angeles County.

25 So, I have personally a peculiar interest in the level
26 of representation, and most importantly, the California Attorneys
27 for Criminal Justice do.
28

1 Let me make sure you understand one thing. California
2 Attorneys for Criminal Justice have always been, and I would
3 suggest will always be, the strongest supporter that the State
4 Public Defender's Office can have. We have never appeared before
5 in opposition to any Governor's Appointment to that position,
6 save for this occasion.

7 When we came into this problem or situation, it was
8 early in 1988, about the spring; in fact, very soon after
9 Mr. Zall was nominated. We started hearing rumors. We, of
10 course, then heard about the Little Hoover Commission doing their
11 study, which really focused on the economic and productivity
12 areas of the office, admittedly, and not so much on morale, no so
13 much on the competency of what was handled. I mean, it touched
14 upon it, but that was not their main thought.

15 We had, in the three cities in which there is a State
16 Public Defender's Office -- San Francisco, Sacramento, Los
17 Angeles -- board members of California Attorneys for Criminal
18 Justice who were contacted by people in the office saying, in sum
19 -- and I'll get into details -- the situation is unbearable; the
20 situation is bad, and can you do something about this?

21 The President of the organization, Tom Nolan, contacted
22 -- in this case it just happened to be me -- to look into it.
23 And what, of course, naturally do I do? I call a few State
24 Public Defenders, past and present, whom I know on a personal
25 basis, just to get some initial information.

26 The information started to validate what we were hearing
27 already. I suggested to Mr. Nolan: it's with the committee; we
28 ought to look into this.

1 We were afraid, I must say, initially there were a
2 couple of very volatile issues. There was, indeed, the
3 relationship between Mr. Zall and the prior interim Director,
4 Monica Knox. But we didn't want to have anything to do with it,
5 because we really wanted to give the benefit of the doubt to the
6 office, which we support heartily, and Mr. Zall, who the
7 committee members -- I think two of the four even didn't know who
8 he was, including myself. So, we decided to form a committee and
9 find out.

10 We interviewed more people. One night in August, 1988,
11 in the city -- which I won't tell you the name now because I'm
12 almost sworn by blood to anonymity -- I met with a Deputy State
13 Public Defender. He had had the ring of All the President's Men.
14 He'd had the ring of "Deep Throat", as he passed me, so
15 reluctantly, documents.

16 Now, as it happened, many of these documents had to do
17 with silly kinds of things: you know, the phone calls, people
18 are using the phones too much, et cetera. There was much of
19 that. There indeed among that group was the letter from
20 Mr. Zall's attorney, telling Monica Knox that she couldn't come
21 to the office.

22 But I mention this incident for the manner in which I
23 was approached, and the manner in which I was sworn not to reveal
24 -- I mean, I didn't have to raise my hand; we didn't go through
25 the formalities -- but this person would not talk to me unless
26 anonymity would be a guaranteed.

27
28

1 Each and every person that I talked to who was a member
2 of the State Public Defender's Office took the same position,
3 each and every one.

4 After we interviewed many of these people, knowing that
5 the Little Hoover Commission now, we had heard, was coming out
6 with a very negative report -- that's what the rumors were, that
7 it was going to come out with a very negative report about the
8 office. We had no idea what it was going to do in terms of
9 Mr. Zall.

10 I must say, Mr. Zall worked our halls also in terms of
11 support, et cetera. But we took no position; we set up a meeting
12 with him. We met for about two hours. He did meet with us. We
13 talked about many things. It was frank. We were not shy.

14 You have to understand the backdrop. We expected the
15 Little Hoover Commission to basically come out and abolish the
16 agency.

17 So, we went to Mr. Zall with the information in good
18 faith and with arms open to let us help you solve any of these
19 problems we can. Let's work together in this thing, but you
20 should recognize some of the things that are going on. You
21 already know senior lawyers are leaving the office in droves.
22 And when they leave, it is affecting the productivity
23 dramatically.

24 For example, when someone like Monica Knox left the
25 office, she left five death penalty cases. Five death penalty
26 cases. This is a brief in a death penalty case. This is not the
27 transcript; this is not the record; this is just the brief that
28 was written on behalf of a particular case.

1 Now, maybe there's too many issues in there, but as it
2 happens, this is John Marks, and his case was reversed. So maybe
3 there were just enough issues, at least as far as Mr. Marks is
4 concerned.

5 In any event, we confronted Mr. Zall with all of our
6 information. And basically our message to him was, "Harvey, it
7 looks like you have a real problem, not from prior
8 administrations. We know about that. We know that this was the
9 Cadillac service. We know that this was indeed the model
10 throughout the nation in the early years. We know that. But
11 we're talking about right now, with people leaving right now,
12 there is a problem, and it keeps coming back to the
13 administration."

14 We tried to be as tactful as possible. There was no
15 question about what the information was. It was all to Mr. Zall.

16 We suggested, for example, "If you don't believe us, do
17 even an informal survey. Make it anonymous. See what people
18 think about what's happening in the administration." I don't
19 think that was done.

20 We suggested many other things: let's communicate;
21 let's be in touch.

22 It's my understanding that that was interpreted, and
23 indeed I think the letter even waved around the halls of this
24 very city, that CACJ was basically trying to tell Mr. Zall how to
25 run his office.

26 I can only say we were direct. We were not timid. We
27 were in his office. We were gentlemanly and lady -- Susan
28

1 Jordan, a member from San Francisco -- but we did not come to
2 torpedo Mr. Zall. We came to help him straighten the problem
3 out.

4 But we had heard that Mr. Zall does not like to receive
5 advice. We had heard that if it is not Mr. Zall's idea, it is
6 not a good idea.

7 We went to our board meeting in Monterey. The board,
8 many of the members were ready to vote right now and to vote
9 down. The committee cautioned, and this is on, incidentally,
10 support of the office or to support Harvey Zall was unclear, but
11 all I can tell you is that the committee cautioned, "Wait. We
12 met with Mr. Zall."

13 And I can tell you -- Clyde Blackman's here; Jim
14 Thompson are here in the audience who were among that committee
15 -- when we left the office, that meeting with Mr. Zall that day,
16 there was a sense -- there was a sense of optimism because you
17 know Mr. Zall is cordial; he is polite; he is very social. And I
18 say that not totally by ridicule, because we did leave that
19 meeting with a sense of optimism, because he said the things.

20 Remember, I said this Committee meeting today, indeed,
21 is about rhetoric and posturing versus the record.

22 But he said the right words to us in the sense of: I'm
23 going to look at it; I'm committed, as he did a moment ago; I'm
24 committed to all these things, and I'm going to look into it.

25 So we went to the board meeting and said, "Don't do
26 anything. It looks like this problem's going to be taken care
27 of."
28

1 Long story short, we had another meeting coming up in
2 December, the main board meeting, and we got back to Mr. Zall by
3 letter. I wrote him a letter. I said, "Harvey," or Mr. Zall,
4 but I think maybe I said Harvey, "just checking back, our
5 thinking being it was such a positive meeting that there's
6 probably some things cooking. What's happening?" This was not a
7 set up deal. We meant what we said. We came to help.

8 And then we received what I'd like to call the stick-it-
9 in-your-ear letter. He took offense. He took umbrage. And as I
10 understand it, he was waving about the letter, indicating that
11 CACJ was trying to tell him how to run his office. Okay.

12 Does it need running? Does he need help?

13 I suggest this to you. The date is March 16th, 1988.
14 It's before the Little Hoover Commission. I am very deeply
15 troubled by the high turnover for a variety of reasons. A number
16 of my colleagues, able and dedicated professionals, very
17 conscientious, committed, productive lawyers that have recently
18 left the office for a variety of reasons, I regret their leaving.
19 I regret their leaving. I think that some of the spirit of the
20 office went with them. It causes dislocation when these people
21 leave. Are these the ones that Mr. Moskowitz was referring to?

22 I suggest you ask Mr. Zall a number of things. One of
23 the things in his leadership capacity, when people like Don
24 Kerson, Clerk for Justice Peters of the California Supreme Court,
25 literally, to use the vernacular, the guru of death penalty
26 appeals, most experienced, way out in front of everybody in terms
27 of setting the pace and setting the trend on what ought to be
28

1 done, and what can be done, et cetera, brilliant thinker -- I ask
2 you to ask Mr. Zall what he did to keep those people from
3 leaving. What was the conversation? What was the dialogue?
4 Were there letters? And Blums, and Rick Lennons, and Monica
5 Knoxes.

6 What efforts did he, in his capacity to these people
7 that took with them some of the spirit of the office, what did he
8 do to keep them?

9 He missed them, apparently. He said he did. I don't
10 know what they're saying today, but in March he missed them.

11 Are there letters? Maybe there are letters of support
12 in the file from these people.

13 We know from the news releases that there's not one
14 single former supervisor of Mr. Zall who supports him. Is there
15 a letter from Mr. Bell? I don't think so; I don't think so.
16 Now, he has not opposed, but there's no letter.

17 I know if I was hiring Mr. Zall myself, one of the first
18 people, if he had worked for Senator Beverly, I'd probably call
19 of Senator Beverly and say, "This gentleman worked for you,
20 Senator Beverly. What do you know? What do you think?"

21 What has happened? That has been the most dramatic
22 effect on the productivity that exists. We're not talking about
23 lazy lawyers. Are these the same lawyers that we just heard
24 testimony about right here, or was it rhetoric and posturing?

25 What has happened to the productivity is now, in the
26 State Public Defender's Office, you have, among other things,
27 people who are being assigned to death penalty cases who have
28

1 less than a year in the office. When the office was started in
2 1976, the very purpose for those of us who were here -- and I
3 think all of you gentlemen were here; certainly you were
4 somewhere -- was that the private bar had been doing things,
5 indeed, for \$1500, and whatever other figures, but had been doing
6 it inadequately. Had been doing it shamefully. Had been doing
7 it ineffectively. And the State Public Defender's Office was to
8 come into that breach.

9 Now, it came in, and it came in with guns blasting and
10 everything else, we know that, and Cadillac service, and no doubt
11 had to be trimmed down to fit budgetary restraints, et cetera.

12 But these problems make a serious mistake. If we let
13 ourselves believe that all the problems that we have today are
14 because of past administrations, don't it strike us as curious?
15 And this is what I mean, I feel -- I actually feel embarrassed to
16 say these things because I know people here are well-meaning.

17 How many of these people worked next to Mr. Zall?
18 Mr. Moskovitz, whose book is purchased by the office, what has he
19 done in that office? Has he worked there? Has he seen the
20 briefs? Has he seen Mr. Zall do one of these?

21 Talk about budgets, we have a budget concern, do we not?
22 But you now have in the office the interesting situation where
23 you have the head Director, who, as I understand it -- he can
24 correct me -- who doesn't carry a caseload. And you have, with
25 all due respect to Matt Newman, whom I do not know -- I am
26 hearing nice things about him -- but still, Matt Newman comes
27 with about two or three years of experience. He does not have a
28 caseload, either.

1 So, that's only about \$150,000 not producing a single
2 brief. So, we start talking about concern about budgets, we
3 should have that in mind.

4 So now, we have the new lawyers. We have, as Mr. Zall
5 likes to bring up, the new blood. I'm going to bring in the new
6 blood. These one-year people who have never done, in some cases,
7 a criminal appeal, but certainly in many cases not even been near
8 a death penalty appeal, are going to step right into the breach.

9 They'll need training; won't they? There is no
10 training. There is no training. There is no in-house training.
11 And the money for outside training is parsimonious, and why?

12 This is so -- again, I don't mean to keep apologizing,
13 but it's so sensitive -- but what happens here is, there is "us"
14 and "them" going on. You know that there is one particular man
15 that is in the forefront of appellate litigation, administration,
16 and that's Michael Millman of the California Appellate Project.

17 Do you have letters of support from Michael Millman? I
18 don't think so, and Mr. Zall knows that. And the bitterness
19 between that organization and the State Public Defender, at least
20 the State Public Defender himself, is widely shared among all
21 those people who, unfortunately, I could not bring here today
22 because they would not come.

23 So we have a seminar. It is the main seminar. It
24 happens to be sponsored jointly by the California Attorneys for
25 Criminal Justice and the California Public Defender's
26 Association. It is an entire weekend at the State Conference
27 grounds in Asilomar, and it lasts -- usually always Presidents'

28

1 Day weekend -- it usually lasts four days. It is the main and
2 really only penalty seminar in California. There are others that
3 the State P.D. puts on piecemeal; maybe a day, maybe a morning,
4 that sort of thing. The State Public Defender's Office will have
5 two people going to that meeting. Costs \$200, \$50 a day for the
6 State Conference Center.

7 Where is the commitment to train those people? I
8 suppose the persons coming from, I think, Los Angeles, and I
9 suppose the persons coming from San Francisco are then going to
10 branch out and train the other 65 people. I suppose that's
11 what's going to happen.

12 Let me just briefly take a look at staff accountability.
13 Let's talk about staff accountability. And I apologize. I
14 promised some people that I would come here, and I would be
15 statesmanlike, because basically that was my mandate: don't do
16 it another way. But it's hard for me not to get excited and
17 reeling with the feeling.

18 But, you know, to overstate it, but to use the exact
19 quote, Edward R. Murrow, who no doubt heard someone else say it,
20 I read in a biography the other day, and you've probably heard
21 the same phrase, about a lie. How a lie gets halfway around the
22 world while truth's still putting its pants on.

23 The staff at the office in Sacramento has changed 100
24 percent. We need new blood in that area, too.

25 When Mr. Zall sat at the budget session, he had Shirley
26 Minnick. When he was at the Little Hoover Commission, he had
27 Shirley Minnick there. You can read the report. I think it was
28

1 sent to you, Senator Roberti, a copy of it. I'm sure it's not
2 the only thing you received. And he deferred to Shirley Minnick.

3 But the day after Shirley Minnick said that she was
4 looking for other work, unknown that Mr. Zall knew, she was fired
5 the next day. Now, you will hear that she was not fired, but I
6 couldn't get a chance to ask her because she wouldn't return my
7 phone call. She's afraid, and that's terribly, terribly
8 troubling to me. Her silence, in my opinion, is deafening, as
9 the others.

10 You think about it. You look at the list of supporters,
11 and you will not see on there people who have actively worked
12 with Mr. Zall.

13 Talk to me about the past. This man was in the office
14 11 years. He was, for a brief time, the Chief Assistant with
15 Mr. Bell, and he was demoted. Oh, there was a different -- at
16 the hearing, there was different linguistics. It was talked
17 about as a change in managing style, and Mr. Bell said that he
18 relieves Mr. Zall of his duties because it -- that is, the
19 position -- didn't work out.

20 Well, there was no training, and there was nothing being
21 done in the position.

22 Mr. Moskovitz, with all due respect, simply does not
23 know what he's talking about when he says that the training
24 manuals and publications are up to date. You should ask
25 Mr. Zall. I'm sure he will tell you honestly when the
26 publications -- what we call the DSL, the determinate sentencing
27 law, book was last published. I'm sure he will tell you when the
28

1 ARSNL -- that's actually an abbreviation, A-R-S-N-L -- which is a
2 brief summary of briefed cases and issues, was last published.

3 As, Senator Petris, you mentioned earlier, indeed, the
4 defense bar has looked to the Public Defender's Office. I'm not
5 talking about for largesse, but for support, for guidance.
6 Indeed, this was the mandate in 1976, to take the lead.

7 Now, okay, trim back budgets, understandably. Trim back
8 budgets. That's understandable. Okay, make some changes. Okay,
9 there will be people who oppose the Renaissance. But all of
10 them?

11 I urge, before I forget, that you not vote today. I
12 urge that you need more information in doing this business of the
13 people. And I realize what that means. That means people who
14 have made commitments -- such as Senator Davis and other people,
15 good people, decent people, in my opinion the same kind of people
16 that, with correct information, accurate information, less
17 rhetoric, less stories, would feel differently -- would have a
18 much different perspective of Mr. Zall's approach to the office.

19 Mr. Zall said in the Little Hoover Commission, we're
20 going to meet and beat our competition. If we're going to meet
21 and beat our competition, it seems to me one of the things you
22 must do -- especially in death penalty litigation in which you
23 have humungous briefs like this, and you have transcripts that
24 you have to read of trials that are at least this long and longer
25 -- you'd better keep the people that know how to do those things,
26 unless they are all in fear of the Renaissance.

1 Ladies and gentlemen -- lady staffers, gentlemen of the
2 Committee -- there's a saying of many of my clients: it's
3 flimflam. Much of what you have heard is flimflam.

4 CACJ does not come here, as has also, I understand, been
5 held out, in opposition to Mr. Zall because of some philosophical
6 angle, some philosophical difference. Have I mentioned
7 philosophy? Have I mentioned who is or who is not for or against
8 the death penalty? Has that been an issue?

9 The committee of CACJ, in the four-month study, never
10 got to that. It never got to philosophy. That was never an
11 issue.

12 Another thing. We are not here, it has been -- I am
13 told that we are doing the dirty work for either Roy Dahlberg,
14 the latest firing of a senior deputy, with three death penalty
15 cases, I understand. Incidentally, I'm on the outside, so I'm
16 not sure if some of the details may be wrong; Mr. Zall can
17 straighten us out. He can straighten us out on whether Mr.
18 Dahlberg, a gentleman with three death penalty cases -- in other
19 words, enormous records, enormous reading, enormous familiarity
20 with the file, enormous time involved in the case -- was fired.

21 Okay, there was some problem; supposedly a problem now
22 in litigation, and some real suggestion how much of a problem it
23 was. But either way, told to get out that day, as if he was a
24 common burglar: leave your files; leave your books; just get
25 out!

26 CHAIRMAN ROBERTI: How much time did he have in the
27 office?
28

1 MR. GILLINGHAM: Roy Dahlberg? He had about 11 years.

2 CHAIRMAN ROBERTI: Is that what happened?

3 MR. ZALL: Senator Roberti, the matter is in litigation.

4 It was not an easy matter for me to decide. I have supplied to
5 this staff a detailed account of that matter.

6 I have Counsel here today that is representing this
7 agency in that matter. I would be happy, if you wanted to go
8 into that matter, he is back there.

9 I could provide you with the relevant issues, but I hope
10 you understand that I am somewhat constrained because the matter
11 is presently before the State Personnel Board.

12 I can only assure you that I did not take that action
13 lightly; that I felt it was absolutely imperative; that I had to
14 conflict out of that case lest the State Public Defender be in a
15 position of arguing its own incompetency. That I then went and
16 sought the Attorney General to represent the agency in that
17 manner to advise me of my rights and obligations. The Attorney
18 General, quite properly, declined to do so because the matter was
19 under litigation.

20 I then went and sought what I believe to be a fair and
21 objective firm, one whose work consists largely of representing
22 employees in front of the State Personnel Board. And I followed
23 their advice.

24 MR. GILLINGHAM: May I inquire?

25 I think the Senator asked, did you fire him and tell him
26 to get out in one day?

27 Was that the question?

1 CHAIRMAN ROBERTI: You followed their advice on what?

2 MR. ZALL: Fired my -- I followed the advice of Counsel
3 as to what my obligations and responsibilities were under those
4 circumstances, and I acted upon it.

5 Counsel is here today if you wish to --

6 CHAIRMAN ROBERTI: Yes, please come forward.

7 MR. SULLIVAN: Mr. Chairman, my name is Robert Sullivan,
8 with the law firm of Turner and Sullivan.

9 And it is true that our law firm represents the Office
10 of the State Public Defender in the pending appeal by Roy
11 Dahlberg on the adverse action of dismissal.

12 And it is true that when he was dismissed, he was no
13 longer a State employee, and he was asked to leave the office. I
14 mean, people who are no longer employed do not properly belong in
15 the private confines of a State office building.

16 CHAIRMAN ROBERTI: What were the circumstances of his
17 firing?

18 MR. SULLIVAN: Mr. Dahlberg was assigned a case in 1986.
19 It was a life without possibility of parole. There was a pending
20 Petition for Writ of Habeas Corpus in the Court of Appeal. That
21 Court denied the Writ, but suggested it should be refiled in the
22 Superior Court where the defendant had been tried.

23 Mr. Dahlberg wrote to the defendant over about a four-
24 month period, telling him that he was going to refile the
25 Petition for Writ of Habeas Corpus in the trial court.

26 Now, this Petition for Writ of Habeas Corpus alleged
27 juror misconduct, such that affected the defendant's right to a
28 fair trial.

1 Thereafter, Mr. Dahlberg, for 18 months, did nothing
2 with respect to filing this case, despite the phone calls and
3 letters of the defendant and his mother, pleading for some
4 information. Letters to Frank Bell, "What are you doing on my
5 case?"

6 There was a Supreme Court decision, in fact one in which
7 Mr. Dahlberg appeared before the California Supreme Court,
8 suggesting that delay in raising issues of juror misconduct
9 would, in and of itself, be grounds to deny such a petition.

10 So, by the time the Petition was ultimately filed, 22
11 months later -- and by the way, Mr. Dahlberg did not file the
12 final petition in the trial court. He handed it off of a new
13 lawyer in the office to do -- 22 months had elapsed. And this
14 man is in life without possibility of parole.

15 Recently, I've been told, the petition was denied by the
16 trial court.

17 You have next to a death penalty case. You can't get
18 any more serious case, yet I suppose some defendants would rather
19 die.

20 CHAIRMAN ROBERTI: You're indicating that Mr. Dahlberg
21 delayed filing of a petition in order to have another --

22 MR. SULLIVAN: Right, he abandoned his client, your
23 Honor -- Senator, essentially.

24 CHAIRMAN ROBERTI: For reasons of probably arguing that
25 the abandonment --

26 MR. SULLIVAN: For --

27 CHAIRMAN ROBERTI: -- well, could be.
28

1 MR. SULLIVAN: For whatever reason, he has a duty to
2 represent his client, and we contend that it's a violation of the
3 Civil Service Act to put the Office of the State Public Defender
4 in a position of having to conflict out because of the defense
5 that Mr. Allen, who is the defendant, could allege: incompetence
6 of counsel. He's been prejudiced by it.

7 So, they did have to conflict out of the Habeas Corpus
8 case.

9 CHAIRMAN ROBERTI: Who is handling that case?

10 MR. SULLIVAN: The Public Defender of Tulare County.

11 CHAIRMAN ROBERTI: Is that case pending right now?

12 MR. SULLIVAN: Yes, it is, sir. It's pending right now,
13 and it's going up to the Court of Appeal, and they did allege
14 incompetence of counsel.

15 CHAIRMAN ROBERTI: And those were the grounds of firing
16 Mr. Dahlberg?

17 MR. SULLIVAN: Yes, the abandonment --

18 CHAIRMAN ROBERTI: Were there any other --

19 MR. SULLIVAN: No.

20 CHAIRMAN ROBERTI: There were no other grounds other
21 than abandonment?

22 MR. SULLIVAN: No, that's correct.

23 CHAIRMAN ROBERTI: Would Mr. Dahlberg, or somebody
24 representing him, be in the audience?

25 MR. SULLIVAN: I'm sure there is.

26 MR. GILLINGHAM: Mr. Dahlberg may be here.
27
28

1 MR. SULLIVAN: And I am also the lawyer that this
2 gentleman referred to as having written a letter to Monica Knox.

3 Ms. Knox resigned from the Office of the State Public
4 Defender, and was showing up at the office, and I asked that she
5 not come into the private areas of the Los Angeles office.

6 I've been representing State agencies --

7 CHAIRMAN ROBERTI: And what was the reason for that?

8 MR. SULLIVAN: Because she was no longer a State
9 employee. She resigned, and continued to come into the office.
10 She did not approve of Mr. Zall, but she continued to come into
11 the office, into the private areas, and she was asked not to do
12 that.

13 And that's one letter, and as far as I know, she
14 complied with the letter.

15 I've been doing this for 20 years, and I can tell you
16 that besides the Agricultural Labor Relations Board a few years
17 ago, I've never seen a public agency legal staff in greater
18 disarray than what I --

19 MR. GILLINGHAM: Well, we're branching beyond our
20 expertise, I think.

21 MR. SULLIVAN: If there are no other questions with
22 respect to Mr. Dahlberg?

23 CHAIRMAN ROBERTI: No, thank you.

24 MR. ZALL: Excuse me, is that my seat? If it is, I'd
25 like to resume it.

26 Senator, I have some papers here.

27 CHAIRMAN ROBERTI: That's fine.
28

1 Mr. Gillingham, are you concluded with your testimony?

2 MR. GILLINGHAM: I was not quite concluded.

3 CHAIRMAN ROBERTI: We'll give you about two more
4 minutes, and then Mr. Read.

5 MR. GILLINGHAM: Right.

6 Number one, I didn't want to get into and diverted on
7 the whole litigation as to the Dahlberg, why he was fired.

8 What I was referring to was the manner in terms of there
9 is a certain continuity. That is, everything that Mr. Sullivan
10 alleges is very much contested by Mr. Dahlberg.

11 When we started the investigation in August, I heard the
12 stories that Zall is after Dahlberg on a, quote, "bogus claim."
13 It's in our survey where we got back anonymously from our
14 members.

15 CHAIRMAN ROBERTI: Nobody's here representing Mr.
16 Dahlberg, I take it?

17 MR. WHITE: Yes, Senator.

18 I'm Michael White, his attorney, and I'd like to address
19 some of the comments made by Mr. Sullivan in due time.

20 CHAIRMAN ROBERTI: Yes, fine.

21 MR. DAHLBERG: Senator Roberti, if the Committee please,
22 on a point of personal privilege, I am Mr. Dahlberg.

23 There is litigation pending. There will be litigation
24 pending both before the State Personnel Board and elsewhere, but
25 I think I should have the right to address these allegations.

26 CHAIRMAN ROBERTI: We will call on you.

27 MR. GILLINGHAM: And I would yield, is that the word?
28

1 CHAIRMAN ROBERTI: Well, I want you to conclude.

2 MR. GILLINGHAM: I'll conclude. I think we've gotten
3 into this.

4 Let me say just one thing about the Knox thing. The
5 letter to not be in the office.

6 This woman had five death penalty cases. And what was
7 she in the office for? Was she stealing erasers? Was she taking
8 pencils? No. Was she willing to continue with some of the work
9 on these serious cases, as opposed to dumping them on somebody?
10 A couple of cases she had, Bowman's for example, monster cases
11 from Los Angeles in terms of length as well as severity.

12 And so, there was a period of trying to pass the baton,
13 if you will. But oh, no. Don't come into the office.

14 Indeed, ask Mr. Zall, if I might as a finishing note,
15 because I think it's so graphic, ask him about the collage that
16 he used to have on the wall for members of his office when they
17 came as a demonstration of power of contact.

18 CHAIRMAN ROBERTI: Power of what?

19 MR. GILLINGHAM: Power of contact. It was a collage.
20 When Ms. Knox had -- and incidentally, this is why we stayed away
21 from it, incidentally, in our study, but it is graphic as to what
22 the dimension of the problem is.

23 Ms. Knox was the interim Director. She and Mr. Zall had
24 a falling out, to say the least. She relieved him of particular
25 duties as the legislative advocate, or actually ordered him not
26 to make certain statements, public or otherwise.

27
28

1 Ultimately what happened is, she was considered for the
2 State Public Defender position, as was Mr. Zall. Mr. Zall was
3 selected.

4 He framed on his wall that three-page letter to him from
5 Ms. Knox relieving him of his duties, and framed also, we had
6 heard -- I didn't see it because it wasn't on the wall when we
7 came for our meeting -- also framed the notation, apparently from
8 the Governor, appointing him.

9 Now, if there's not some message that makes people meet
10 you late at night and not want to hear things, I would only
11 conclude --

12 CHAIRMAN ROBERTI: Was Ms. Knox still an employee?

13 MR. GILLINGHAM: You mean at the time of the collage?

14 CHAIRMAN ROBERTI: Yes.

15 MR. GILLINGHAM: I'm not sure when she left. I don't
16 know the timing of it, Senator, the exact timing. And to say
17 that she was not fired, she indeed left. She wanted to transfer
18 down to L.A. -- I think she had already bought a house -- but she
19 couldn't get the transfer from the office, as I understand it.

20 So we have again rhetoric, where I started, rhetoric and
21 posturing over what is the demonstrable record.

22 I urge you not to vote today. I urge you to reach into
23 the office. I urge you to reach out to some of the people and
24 find out what the information is, and I think that your view of
25 Mr. Zall and his capacity to lead this office will be
26 dramatically changed, if it's not changed already.

27 I thank you very much.
28

1 CHAIRMAN ROBERTI: Thank you.

2 We will break for ten minutes.

3 (Thereupon a brief recess was taken.)

4 CHAIRMAN ROBERTI: The Committee will come to order.

5 What I am planning to do is to hear Mr. Dahlberg and his
6 attorney, a response from Mr. Zall. I think there are other
7 people who want to testify.

8 If the Committee is agreeable, we could maybe put the
9 rest of the testimony over until next week or the week after,
10 because we until March 8th. I hate to inconvenience anyone, but
11 this seems to be lasting a long time.

12 Is there any objection on the Committee to that?

13 SENATOR MELLO: I think there should be a limit. The
14 last person spoke for about an hour.

15 CHAIRMAN ROBERTI: I understand that.

16 MR. ZALL: Senator, if I might just say something along
17 those lines.

18 CHAIRMAN ROBERTI: Yes.

19 MR. ZALL: Judge David Allen has come from Visalia. He
20 is a big trial judge.

21 CHAIRMAN ROBERTI: I understand, yes, then we would have
22 him testify as well.

23 Mr. Dahlberg.

24 MR. DAHLBERG: Senator Roberti --

25 CHAIRMAN ROBERTI: And if you want to bring your
26 attorney, fine.

27

28

1 Unfortunately, I know this case is pending, but it's an
2 issue in the confirmation.

3 MR. DAHLBERG: Senator Roberti, I had not planned to be
4 a part of this hearing. And I find --

5 CHAIRMAN ROBERTI: If you do not choose to be, you do
6 not have to be.

7 MR. DAHLBERG: Right, I understand that.

8 I find that I'm rather angry. My attorney, I think
9 rather wisely, counsels me that I should not go into a detailed
10 discussion of this case. However, I would like to say two
11 things.

12 Mr. Sullivan has made a number of representations about
13 my incompetent handling of this case, which is People vs. Steven
14 Allen. I don't want to go into great detail.

15 Mr. Sullivan, I think, flat out lied when he spoke of
16 the resolution of that case being still pending. In fact, the
17 Superior Court in which it was resolved, resolved the case
18 against Mr. Allen on its merits and found that there was not a
19 timeliness problem.

20 Now, he did not tell you that, and Mr. Zall would not
21 have told you that.

22 And that is the kind of lying and deceitfulness that has
23 characterized the last ten months of the administration of the
24 State Public Defender's Office.

25 Now, those are matters that properly --

26 CHAIRMAN ROBERTI: Are you saying that there would not
27 have been an issue of the State Public Defender arguing its own
28 incompetence?

1 MR. DAHLBERG: I -- I really don't want to do into the
2 details of that outside the Personnel Board hearing.

3 I think that Mr. Zall's actions in the matter were
4 entirely inappropriate for a number of reasons independent of
5 this. In the past, Mr. Zall has personally threatened me.

6 I was the union representative in the agency from the
7 beginning. Mr. Zall has made a number of allegations about not
8 liking the union being there. I have been the most outspoken
9 advocate of both the rights of our clients and staff members.
10 And I personally think that that is the reason that I was
11 summarily fired with no notice and told to be out of my office by
12 the end of the day.

13 That happened, by the way, the day after Mr. Zall found
14 that the Court in the Allen matter had found me not to be
15 incompetent and had reached the merits of the issue.

16 The second thing I would like to ask --

17 CHAIRMAN ROBERTI: Which court was that?

18 MR. DAHLBERG: It was the Superior Court of Tulare
19 County.

20 We have never been provided with that documentation,
21 although we found it. And of course, as I say, Mr. Sullivan did
22 not mention it, nor has Mr. Zall. Nor, I think, would they have
23 had I not come up, from us.

24 The second thing I would like to tell you is, as the
25 union representative, I have had a lot of contact with the staff
26 attorneys in the State Public Defender's Office. They are,
27 virtually to a person, afraid to testify before this Committee as
28

1 to the kinds of lack of training, just simple high-handedness
2 that has characterized all the administration of the office.
3 They see my firing as an example as to what will happen to people
4 who speak out for themselves.

5 Now, I would very much request this Committee, if it has
6 time, to make an effort to contact, individually, the experienced
7 attorneys. The attorneys who've only been there a few weeks or a
8 few months, who compose a large number at this point, obviously
9 are not going to know a great deal about it. But to contact
10 those experienced attorneys in the office, confidentially,
11 because they feel that their jobs are in great jeopardy, and find
12 out exactly what they have to say about what's going on in the
13 office, and what Mr. Zall is doing, and where he plans to take
14 the office.

15 I don't know the answer to that. And I don't see any
16 point in my sitting here, waxing philosophical about what the
17 Bell-Zall administration did that they shouldn't have done, and
18 whether or not Harvey is capable or not capable of remedying
19 those wrongs. I think you can get that from other places, and
20 you can get it from me when I'm not essentially with my hands
21 tied by pending litigation.

22 And I thank you very much for giving me the opportunity
23 to address you.

24 CHAIRMAN ROBERTI: Thank you.

25 Any questions? Mr. Zall, do you want to respond? Then
26 we'll have Judge Allen, and then we will break for one week or
27 two. We'll notify the Members. I don't know what the calendar
28

1 is for next week; that's why I can't say we'll take it over until
2 next week.

3 Mr. Zall, if you would like to respond, then we'll have
4 Judge Allen.

5 MR. ZALL: I would prefer, since the matter is under
6 active litigation, to once again ask Counsel, who has advised me
7 to respond, if he thinks it is appropriate.

8 CHAIRMAN ROBERTI: Please do.

9 MR. SULLIVAN: Mr. Chairman, I don't think it's
10 appropriate to say any more, except that I don't think I lied. I
11 said the petition was denied.

12 CHAIRMAN ROBERTI: For the record, Mr. Sullivan.

13 MR. SULLIVAN: And the Tulare County Public Defender
14 informed one my partners that they have -- intend to go on to the
15 District Court of Appeal. In that sense the case is still
16 pending.

17 But I think I testified that we just learned that the
18 petition was denied.

19 Other than that, I don't choose to respond at this time.

20 MR. DAHLBERG: I would ask the Committee Members to make
21 their own decision as to whether or not Mr. Sullivan implied that
22 it was denied on the basis of my alleged incompetence or on the
23 merits. You heard what he stated.

24 Indeed now, in the appellate review, will not go to the
25 question of timeliness because that has been factually decided by
26 the Superior Court.

27 Thank you very much.
28

1 MR. WHITE: May I?

2 CHAIRMAN ROBERTI: Yes.

3 MR. WHITE: I have a few brief comments.

4 My name is Michael White. I am the attorney of record
5 for Mr. Dahlberg in his appeal to the State Personnel Board from
6 the dismissal action taken by Mr. Zall.

7 I've done substantial investigation into this case, into
8 the allegations lodged against my client. I have talked to all
9 but one of the previous Public Defenders, either appointed by
10 Governor Deukmejian or Jerry Brown, or served in some interim
11 capacity.

12 Without exception, every single one of those individuals
13 has told me that they had questions about Harvey Zall's abilities
14 while he was working in the office. And some of those abilities
15 reached far beyond just the day-to-day operations, but also
16 administrative abilities.

17 I would urge this Committee to take the time and do some
18 -- something more than service investigation into the
19 qualifications of this man.

20 The act of firing a long-term employee, after 11 years
21 of unblemished State service, is a question of discretion. It
22 calls into question the man's judgment.

23 If you do some investigation on something more than
24 surface investigation, you will find things about Mr. Zall and
25 his abilities to perform under the same kinds of conditions that
26 he is now accusing my client of not performing under. And there
27 has been a practice in that office in the past to do something
28 other than termination with those kinds of circumstances.

1 The discretion of Mr. Zall in this particular
2 disciplinary action is certainly in question. And I think if you
3 look behind the surface, you're going to be alarmed. I urge you
4 to take the time.

5 CHAIRMAN ROBERTI: Thank you very much.

6 Judge Allen.

7 JUDGE ALLEN: Thank you, Senator, Committee persons.

8 My comments will be brief. There is very little that I
9 can say that would shed any light to you concerning what's been
10 occurring here in the last ten months with Harvey's handling of
11 the office. I know little about that.

12 My comments are directed to my acquaintance with him
13 back in the mid-'70s, when I was a Judge of the Municipal Court,
14 when he appeared in front of me numerous times acting as a public
15 prosecutor and as a public defender.

16 He had a very heavy caseload as a Deputy Public
17 Defender. I felt that he handled it quite capably. I thought
18 his ethics were of the highest order. He didn't appear to be
19 sloppy. He did his job well.

20 Eventually he left the community of Visalia and went on
21 to work in the State Public Defender's Office. I again had the
22 occasion to work with him when I was sitting briefly as a pro tem
23 Justice in the Fifth District Court of Appeal. Harvey was a
24 deputy in the appeals office at that time, and he argued several
25 cases in the two to three months I was working there. Again, I
26 thought he handled his appellate cases well. I didn't think he
27 was sloppy. I don't recall any times when he was late. I cannot
28

1 recall other Justices there complaining about his handling of
2 matters.

3 Basically that's all I can say. It's somewhat in the
4 past. I'm sorry that I can't give you anything and tell you
5 anything concerning some of the other controversies and issues
6 I've heard raised here this afternoon.

7 CHAIRMAN ROBERTI: Any other questions or observations?

8 Is there anyone else who's come from a long distance who
9 cannot come back at another date?

10 MR. CUTLER: Is 50 miles long enough?

11 (Laughter.)

12 CHAIRMAN ROBERTI: Well, I guess it depends on how long
13 you're going to be. Come on up. Please come forward.

14 MR. CUTLER: Senators, members of your staff, I can't
15 help asking myself --

16 CHAIRMAN ROBERTI: Please indicate your name.

17 MR. CUTLER: Excuse me. I was going to introduce myself
18 slowly.

19 My name is Mark Cutler. I'm a private attorney in Cool,
20 California.

21 I formerly spent seven years in the State Public
22 Defender's Office, four of them as a fellow Deputy with Mr. Zall
23 in the Sacramento office -- no, three of them; four of them
24 supervising Mr. Zall when I was Chief Assistant in charge of that
25 office. Prior to that, I worked with him as a fellow Deputy
26 Public Defender in Tulare County for a year, and I also worked on
27 the opposite side of the court from him when he was in the
28

1 District Attorney's Office and I was in the Public Defender's
2 Office. So, I've known him over a considerable period of time.

3 I guess what I'm here for is to provide some of the
4 specifics, some of the things that have been alluded to by other
5 witnesses who talk about things that people are saying with the
6 State Public Defender's Office, or people who have left the
7 office, but they're not able to get into the specifics in the
8 same way that I am, after working with Mr. Zall for so many
9 years.

10 On thing I want to do before getting into some of these
11 specifics is to set the record straight on a few things. I was
12 kind of amused by Mr. Moskovitz's praise of the training program
13 in the State Public Defender's Office. And he talked
14 specifically about the DSL Sentencing Manual, seeming to imply
15 that Mr. Zall gets some credit for these excellent training
16 materials.

17 In fact, I'm the person who wrote the DSL Sentencing
18 Manual that Mr. Moskovitz is talking about. I wrote it back when
19 I was a Deputy Attorney, handling about twice as many cases as
20 Mr. Zall has able to handle while he was not turning out any
21 training materials.

22 After I left the office, Rick Lennon kept the DSL
23 Sentencing Manual up to date until Mr. Zall stopped him from
24 doing that, and finally drove Rick Lennon out of the office, out
25 of disgust as the way Mr. Zall operated.

26 As far as I know, the DSL Sentencing Manual has died a
27 quiet death since then. Perhaps we can ask Mr. Zall if they
28 still currently keep that up to date.

1 I also found it fascinating to sit here and listen to
2 Mr. Zall and other people talk about the need to produce more
3 cases in the office; the need to whittle out the issues and
4 present just, you know, the vital issues and not hit the court
5 with everything you can imagine.

6 Mr. Zall, as a Deputy Attorney, was very good at
7 whittling out the issues. He presented as few issues as he
8 possibly could. And what's amazing is, to hear him talk, this is
9 supposed to be the road to greater productivity.

10 My criticism of Mr. Zall was not that he didn't file --
11 that he didn't brief enough issues; not that he didn't file reply
12 briefs, petition for rehearing, or petition for review often
13 enough.

14 My criticism was that, having made those professional
15 decisions that it's only necessary to brief one or two issues
16 when most attorneys were briefing three or four, having made the
17 professional decision that these extra briefs were not necessary,
18 why couldn't he produce more? I don't want to quarrel with his
19 judgment as to how much work was necessary in each particular
20 case.

21 My point has always been that, since he was clearly
22 doing far less work on each case than anybody else in the office,
23 why was he at the same time close to the bottom of the list in
24 terms of the number of cases he can handle?

25 Productivity in the office has always been a problem,
26 but I think what you need in that office is a credible leader.
27 That's a small office. Those people know what Mr. Zall produced
28

1 when he was a Deputy in the office. They know it's a joke when
2 he gets up there and pushes for productivity because he couldn't
3 produce. They know that.

4 So, how can they respect his leadership? How can they
5 respect him when he comes out and starts criticizing people for
6 making long distance phone calls on the State phone when
7 everybody knows he was the greatest offender at that?

8 You know, what was really interesting about his
9 responses in the legal newspaper last week is that he never
10 denied the specific allegations that I made in my six-page letter
11 to the Committee. He talks about yesterday's men with their
12 failed promises, but he attacked personally myself, Quinn Denver,
13 Mark Christiansen, the former supervisors of his who have
14 criticized him, but he hasn't denied the specific allegations.

15 That's something I hope you'll do here before you're
16 done, is to just ask him straight out: Is it true that you used
17 to call your brother in Marin almost every day and chat for 30 to
18 60 minutes? Your brother who's not a lawyer? Just ask him
19 whether that's true or not. I hope you'll do things like that.

20 I'm very saddened by his effort to rewrite history. I
21 was very offended at his comments in the Daily Journal when he
22 seemed to acknowledge that the State Public Defender's Office is
23 in bad shape, and he seeks to blame people like Quinn Denver,
24 who's been out of that office for five years.

25 I want to remind you that Frank Bell, who was appointed
26 by Governor Deukmejian, ran the State Public Defender's Office
27 from 1984 until late 1987. During almost all of that time,
28

1 Mr. Zall was the Chief Deputy, second in command at the office.
2 For nearly a year now Mr. Zall has been in charge of the office.

3 I think you should ask him to explain why he and Frank
4 Bell have not had enough time to cure whatever harm they think it
5 is that Quinn Denver caused five years ago.

6 The truth is, and I know several of you have been
7 familiar with the office long enough to know this, that office
8 was a very respected and effective office until the staff and the
9 budget were cut in half in 1983. When that happened, there was
10 unprecedented support for the office from conservatives and
11 liberals alike, from trial court judges, from most of the State's
12 appellate justices, from newspapers, from local bar associations
13 throughout the State, from many private attorneys, from many
14 Legislators.

15 In fact, I've brought with me here a box filled -- I
16 want to leave this for you to go through -- this box is filled
17 with the letters of support that we gathered in a six-month
18 period there. This demonstrates far better than anything that
19 Mr. Zall can say that there was great support and respect for the
20 Public Defender's Office in the state the Quinn Denver left it.
21 Indeed, inside this box you'll find letters of support from
22 Senator Roberti, Senator Petris, and Senator Craven.

23 The truth is --

24 SENATOR PETRIS: Excuse me.

25 Does that disqualify me from voting on this matter?

26 (Laughter.)

27

28

1 CHAIRMAN ROBERTI: We have a five-year statute of
2 limitations here.

3 MR. CUTLER: The truth is that Mr. Zall has been in
4 charge or second in command of the State Public Defender's Office
5 during the period of decline. The productivity in that office
6 was higher when Quinn Denver left it, when I left it, that it is
7 now.

8 Morale -- sure, we had a morale problem when the office
9 was cut in half, but Mr. Zall has offended so many of the
10 experienced and talented attorneys in the office that most of
11 them have left. And the ones he hasn't -- the ones that haven't
12 left voluntarily, he's forced out in one way or another, and he's
13 left with an office that's unable to handle the many capital
14 cases that should be their top priority.

15 That's what's the problem in that office right now, is
16 every time somebody leaves, and all these cases get turned over
17 to somebody new that has to duplicate the reading of thousands,
18 sometimes tens of thousands of pages of transcript. That's
19 what's depressing in that office.

20 Mr. Zall's been running the office for nearly a year,
21 and they've accepted appointment in one capital case in that
22 time, unless my figures are a few weeks old, unless there's been
23 something recent. One capital case in nearly a year. We used to
24 take eight or ten of them a year. And in fact, the one they
25 accepted was a client that they already represented in another
26 capital case, so they pretty much had to take that one.

1 CHAIRMAN ROBERTI: What happens when they don't accept
2 the appointment? Then the private counsel --

3 MR. CUTLER: Private counsel are appointed.

4 CHAIRMAN ROBERTI: -- are secured?

5 MR. CUTLER: Right.

6 But the enabling legislation for the State Public
7 Defender's Office has always made that one of the top priorities
8 for the office, and they just -- they're unable to handle it
9 because they can't keep qualified staff in hand, and because
10 they're in shambles with all of the cases turned over by the
11 senior people who've left.

12 Now, Mr. Zall talks about staff accountability. He says
13 he's ended this unsupervised work at home practice. That's
14 another interesting comment for him to make. He took advantage
15 of that practice.

16 I realize work at home sounds a little strange. What
17 this is, you have to realize, when you have these transcripts --
18 a thousand pages of transcripts to read, and you're working in an
19 office with 25 attorneys going around, talking to one another
20 about their cases, and about different issues, and getting phone
21 calls all day -- it can get very hard to read those transcripts.
22 It was felt that if attorneys were allowed to spend time outside
23 of the office -- and in fact it wasn't called work at home; it
24 was called work outside the office -- many of the people would
25 read their transcripts in law libraries around the city. Some
26 people probably read their transcripts at home. It was always
27 our feeling that they would get much more accomplished by reading
28

1 thousands of pages of transcript without the interruptions that
2 were unavoidable in the office.

3 Now, Mr. Zall never complained about that policy when he
4 was a Deputy Attorney, working outside the office some days of
5 the week. Ask him about that. Was he able to get more reading
6 done outside the office than he could have inside the office? Or
7 was he home, tending to his garden? Ask him about that.

8 I'm not sure what the answer is, but either way, if he
9 was able to get the work done more effectively that way, then
10 what's wrong with the practice? He was he was home, working in
11 his garden, then I think that demonstrates that he's really not a
12 suitable person to be -- or a credible person to be running the
13 office.

14 There's been talk about the late notices from courts of
15 appeal. Judge Allen came up here a few moments ago and said when
16 he worked as a pro tem Justice in the Fifth District, he doesn't
17 remember complaints about that.

18 This is simple. Ask Mr. Zall. Is it true that you
19 received three late notices in the space of a week? He says lots
20 of attorneys received late notices. That's what he said in his
21 newspaper response. Can he tell you anybody else who received
22 three of them in the space of a week?

23 In my experience, probably half the attorneys in the
24 office, at one time or another, received one such notice. And
25 when they received one such notice, they made sure they didn't
26 let it happen again. Very few people received more than one. I
27 don't remember anybody who received three of them in the space of
28 a week. Ask him whether that's true or not.

1 Ask him whether, after I told him this was intolerable,
2 he got another one six weeks later. Ask him whether he got
3 another one three months after that.

4 Ask him whether or not I specifically told him, on
5 numerous occasions, that cases that he had needed work that
6 apparently wasn't being done. I was keeping better track of his
7 cases than he could. I was telling him, "You've got due dates
8 coming up, and you haven't done anything in this case." Ask him
9 whether that happened or not.

10 Ask him why he couldn't take the few minutes necessary
11 to put together a boiler plate request for an extension of time.
12 Ask him if he thinks it generates respect for the office or for
13 himself when he can't be courteous enough to comply with the
14 rules of court, even when compliance takes only a few minutes.

15 Now, he responds and says, "No case of mine was ever
16 dismissed because of tardiness." That's true, but that's not
17 what we're talking about here.

18 We're talking about doing the things that an attorney is
19 supposed to do. We're talking about an office, full of Deputies,
20 that knows that Mr. Zall got all these late notices; that knows
21 that Mr. Zall had no ability to manage his own caseload. An
22 office full of attorneys that's now supposed to look to him as
23 their leader; an office full of attorneys that have no respect
24 for his abilities as an administrator because he doesn't have
25 abilities as an administrator.

26 He's got some abilities. I don't want to say that this
27 is, you know, a worthless man. He's got -- certainly he's
28 charming. Ted Bundy was charming. We have to look beyond --

1 MR. ZALL: Mr. Chairman! I want to raise a point of
2 person privilege.

3 To compare me, this man here, to Ted Bundy I think is
4 wholly unconscionable! I'm sorry! I cannot idly sit by and
5 watch Mark Cutler, who one day asked me to be my Chief Deputy,
6 compare me to Ted Bundy!

7 Whatever I have done, whatever I have done, it has -- to
8 compare me to Ted Bundy, that is an outrage! And I'm not going
9 to sit here, Mr. Chairman, and listen to him say that, and sit in
10 silence!

11 Excuse me.

12 CHAIRMAN ROBERTI: Thank you, Mr. Zall. I agree with
13 you.

14 MR. CUTLER: I certainly --

15 CHAIRMAN ROBERTI: That was very much uncalled for.

16 MR. CUTLER: I certainly don't mean to imply that
17 Mr. Zall was a mass murderer.

18 What I mean to imply is that it's very important to look
19 past charm, and to see whether the charm is hiding something
20 else; whether there's something below the surface that's being
21 missed because a person comes across as charming. That's the
22 point I'm trying to make, and I think it's a valid point.

23 CHAIRMAN ROBERTI: Thank you very much.

24 Mr. Zall, would you like to have a rebuttal? I think
25 you've made your rebuttal very well.

26 MR. ZALL: Mr. Chairman, if I might, Mr. Cutler sometime
27 ago sent this Committee, with no copy to me, a seven-page letter
28 to you and fellow Members.

1 I spent a considerable amount of time responding to
2 that. I gave a copy of that -- I gave the original of that
3 letter to Ms. Michel.

4 I'd be happy to answer some of the questions that are
5 raised by that letter. I think all of the charges that he makes
6 are either rebutted or satisfactorily explained away in that
7 letter.

8 CHAIRMAN ROBERTI: We have a copy of the letter.

9 MR. ZALL: And I'm happy to rest on that, unless you
10 have any questions.

11 CHAIRMAN ROBERTI: I don't. Do any of the Members?
12 Senator Petris.

13 SENATOR PETRIS: Since Mr. Cutler apparently isn't going
14 to come back -- it would be probably better if you were here for
15 the rest of the hearing -- but anyway, there's one thing that
16 troubles me about two of the principles involved here: you and
17 Ms. Kahn. And that is the fact that you were competing.

18 Monica Kahn -- Monica Knox. There was some competition
19 there, and that happens in many offices. You're bucking for the
20 same job, and some other person got it.

21 People react differently to that sort of thing. Some
22 people just salute the winner and keep on doing the work and hope
23 they continue in a good capacity, and so forth. And others get
24 all upset.

25 I think you ought to comment on that, at least for
26 yourself, because it does raise a question of how that affects
27 your viewpoint, particularly in view of his allegation that you
28

1 had asked him to make you his Chief Deputy. I think that needs
2 to be answered.

3 MR. CUTLER: Let me clarify a couple of misconceptions
4 here.

5 I've never been in competition with Mr. Zall. I've
6 never applied for the position of State Public Defender. I think
7 you need only look at me and know that I have no fantasies that
8 Governor Deukmejian would ever appoint me to anything.

9 SENATOR PETRIS: I don't know, you look like Lincoln to
10 me.

11 (Laughter.)

12 MR. CUTLER: I could respond to that, but I won't.

13 At any rate, I've never applied for the position of
14 State Public Defender.

15 There was a point when I was still in the office,
16 actually I think it was even before Quinn Denver left, or maybe
17 right about the time he left, when Mr. Zall was apparently
18 seeking the position of State Public Defender at that time, and
19 he failed to get the position.

20 There was a time when I had a fanciful conversation with
21 him, when I said something to him along the lines of, you know,
22 "Harvey, if you ever got the position of being the State Public
23 Defender, you know as well as I do that you have no
24 administrative talent, and I hope that if you got that position,
25 you would at least put a strong administrator second in command."
26 And I think I joked about myself or Ezra Hendon as the type of
27 person who would be -- who he should put second in command.

1 I never actually applied for that position. I didn't
2 apply for that position under Frank Bell.

3 When Frank Bell put Harvey in that position, I
4 immediately announced my resignation, and I walked into a staff
5 meeting and told the staff that I could no longer support the
6 decisions that Frank Bell had made. I left the office.

7 I've never regretted leaving the office, believe me.
8 Getting away from the bureaucracy in that office is probably the
9 best thing that ever happened to me. I've enjoyed four years in
10 private practice. I don't have any desire to come back to that
11 office.

12 When Mr. Zall was named State Public Defender back in
13 March, I was -- actually, I was quoted without being named as my
14 reaction when a reporter called me and told me that, "This has to
15 be some kind of a joke."

16 I called Mr. Zall and talked to him a little bit at that
17 time. And I -- I urged him not to be vindictive as State Public
18 Defender. I urged him not to fill the office with political
19 friends of his, but to get people in the office who could do the
20 job and do the job well. I told him that I thought people like
21 Roy Dahlberg, who was then the Chief Assistant in Sacramento, was
22 doing a good job and was well liked, and he'd be well advised to
23 keep people like Roy Dahlberg in that position. I told him I
24 thought Monica Knox would be a good person to keep in charge of
25 the office that she had been running.

26 He thanked me for the advice. I did not in any way in
27 that conversation seek the Chief Deputy position. I told him,
28

1 once again, that I thought it was very important that he get a
2 Chief Deputy with some administrative ability because he didn't
3 have any, and he agreed with me on that.

4 He wrote me a letter shortly after that in which he
5 implied that I was seeking a job, and I quickly wrote right back
6 to him and said that he misunderstood me, and that I had no
7 desire to work under Mr. Zall.

8 Frankly, I found Harvey amusing when I was his
9 supervisor, and when I could end the conversation by saying,
10 "Harvey, I'm tired of listening to you talk endlessly." The man
11 could never come to a conclusion. He could just talk endlessly.
12 I could enjoy him in that context when I could say to him,
13 "Harvey, I've had enough. Go away and let me get some work
14 done."

15 But I could never work in a situation of him being my
16 supervisor and being required to sit in a room and listen to him
17 go on, and on, and on.

18 SENATOR PETRIS: That telephone conversation you made,
19 after you learned he was appointed. Would you characterize it as
20 friendly between the two of you?

21 MR. CUTLER: Uh, yeah, I would. And it was made in the
22 hope that --

23 SENATOR PETRIS: On the advice you were giving him.

24 MR. CUTLER: Right, on the hope that he would listen to
25 the advice I was giving him.

26 And the reason I'm here today is because I've seen since
27 then that he has not done that at all. That he has driven the
28

1 good people out of the office for vindictive reasons, not because
2 of any problem.

3 He bragged in the Daily Journal article about an
4 innocent client that he got out of prison. That's true, he did
5 that.

6 Ask him how long he sat on that writ before he completed
7 the work on that. I think you'll find that it was comparable to
8 the delay he's accused Mr. Dalhberg of, except there's one big
9 difference: he had an innocent client sitting in prison while he
10 delayed his work on that case. Took him an awful long time to
11 get that case together.

12 My experience with him over and over again was, he
13 delayed cases repeatedly. He had defendants with simple
14 sentencing issues, and it would take him six months until he'd
15 turn in a brief that should have been turned in in a month.

16 Ask him about some of these other things. The Pizano
17 case that they mention in here. This is a disgrace! He forgot
18 to inform him client of the Court of Appeal decision in this
19 case. For some reason, the client wrote him four times over the
20 course of a year, and he ignored those letters. The client had
21 to write to the Court of Appeal. The Court of Appeal had to
22 write to me. I had to come to Harvey and say, "Harvey, what
23 happened to this case?" He finally found the file. He admitted
24 to me that, "Yes, this case was decided a year ago, and I never
25 communicated with the client." Ask him whether that's true or
26 not. Ask him how he can justify that.

1 SENATOR PETRIS: Is that paper you're referring to the
2 same letter you sent, or is that something new?

3 In other words, do we have a list of those questions? I
4 don't remember all these questions you're throwing at us.

5 MR. CUTLER: No, the questions -- the items that I'm
6 talking about are in the letter that I wrote to the Committee.

7 The paper that I'm talking about is the Daily Journal
8 article that was last Thursday or Friday, which spoke of some of
9 the criticisms myself and others have made, and some of the
10 responses that Mr. Zall has made.

11 And he seems to think there's something wrong with the
12 fact I didn't send him a copy of my letter. He didn't send me a
13 copy of his response either, so I think we're even there.

14 I have no idea what he said in response to my
15 accusations, but I suspect that what he's done is attack me on a
16 personal level and avoided a straight answer to the specific
17 accusations. I don't know. Maybe he did answer them. I don't
18 know if he admitted them or denied them.

19 SENATOR PETRIS: Among other things, he says he's never
20 had a brother who lived in Marin. He has a brother, but he
21 didn't live in Marin. And the phone calls he made were billed to
22 his home phone, not to the State.

23 I suppose we can establish that if it becomes that
24 important.

25 MR. CUTLER: Well, if the calls were billed to his home
26 phone, they wouldn't have showed up on the State telephone bill
27 that I looked at month after month.

28

1 SENATOR PETRIS: That's clearly a conflict we'll have to
2 check out.

3 MR. CUTLER: If it wasn't a brother, perhaps it was
4 another relative.

5 SENATOR PETRIS: Maybe there's another brother.

6 MR. CUTLER: Maybe I've got the wrong city, but I know
7 the calls were made. I know they were made daily. I know I
8 discussed them with him. I know he admitted doing it. He
9 claimed that talked about his cases.

10 SENATOR PETRIS: About writing.

11 MR. CUTLER: And he said that was very helpful.

12 And that's kind of another -- this is something else Mr.
13 Zall was well-known for in the office, is that before he could
14 sit down and write any brief, he went from room to room, talking
15 to every attorney in the office about an issue before he could
16 sit down and write about it. This was one of the reasons why
17 people had to get out of the office to get anything done, because
18 Mr. Zall wouldn't leave them alone.

19 Perhaps his brother would listen to him talk when the
20 other attorneys in the office wouldn't listen any more.

21 Take the advice some of the other witnesses have given
22 you and do some confidential investigation. Talk to the people
23 in the office. See whether this is true or not.

24 I mean, these are some -- you know, ask yourself: why
25 are people like Quinn Denver, Mark Christiansen and myself, why
26 are we all sticking our necks out and getting involved in this?
27 If Harvey's really the capable person that these people, who've
28

1 never worked with him, or who haven't worked with him in the
2 office, they seem to think he's so capable -- if those of us who
3 worked with him saw that kind of ability in him, why wouldn't we
4 be tickled pink that the Governor has appointed somebody from
5 within the office who's got the experience and knowledge? Why
6 wouldn't we be pleased to see him?

7 This is not fun for me to come down here and dredge up
8 these old things. I'm doing this because I'm grossly offended at
9 seeing an office that was filled with qualified people, at seeing
10 the qualified people driven out and seeing one of the least
11 qualified people who worked in that office be rewarded with the
12 top position. That's why I'm here, and that's why other people
13 who supervised Mr. Zall have spoken out against him.

14 Why hasn't he been able to bring in a single former
15 supervisor to praise his work? Instead, he goes around
16 politicking. He gets judges, and Legislators, people to say,
17 "Oh, yeah, he's this great guy."

18 This is something -- you Senators, you know how much
19 time over the last five years Mr. Zall has spent becoming
20 friendly with some of you; becoming friendly with the people on
21 your staff; becoming friendly with some of the judges that he's
22 brought in to testify.

23 Just ask yourselves, ask each other: how has he had the
24 time to do just a fantastic job of politicking, to do such a
25 thorough job of self-promotion; how has he had the time to do all
26 that, and still get work done in his job, his public job that's
27 paying him a higher salary than any of you are getting from the
28

1 State of California? Ask him how he's had the time to do that
2 amazing amount of politicking and still do the work.

3 I think if you'll look at the specific cases I cited in
4 my letter, you'll see how he's had the time. He ignored his
5 work. Spent his time in self-promotion.

6 And it's sad to see that that's paying off.

7 You know, I recognize the inevitability of this
8 confirmation. I'm not here tilting at windmills. I'm here to
9 try to set the record straight.

10 I'm here because it bothers me that so many people who
11 know the truth about him are afraid to speak out because they
12 still work for him, or because they're afraid that he's such a
13 vindictive person that he'll get even with them, even if they
14 don't work for him any more, or people that want to be judges and
15 think Mr. Zall has influence.

16 I know many, many people who fall into those categories,
17 so many people that know the truth and won't come here and say
18 it. And I finally decided I had to come and speak out because
19 somebody had to, and nobody else seemed to be willing to.

20 But there's nothing in this for me. I'm not looking for
21 the State Public Defender's job. I'm not going to get the State
22 Public Defender's job.

23 I've known Harvey for many years. I know it's a
24 disgrace to put him in charge of that office, and 95 percent of
25 the attorneys that work for him know it. And if that's not a
26 morale problem, I don't know what is.

27 CHAIRMAN ROBERTI: Thank you.
28

1 SENATOR MELLO: Mr. Chairman.

2 CHAIRMAN ROBERTI: Senator Mello.

3 SENATOR MELLO: I want to ask this person a question.
4 He seems to know a lot more than I do as a Member of the Rules
5 Committee.

6 What's the vote going to be on this confirmation?

7 MR. CUTLER: Here or on the Floor of the Senate?

8 SENATOR MELLO: Right here.

9 MR. CUTLER: It's going to be five-nothing. On the
10 Floor of the Senate it's going to be forty-nothing. I know.

11 SENATOR MELLO: During the last five years, I met Mr.
12 Zall about two weeks ago for 15 minutes, when he called in my
13 office wanting to introduce himself. And that's the only time
14 I've ever seen him or met him in my life.

15 Who's he been lobbying up here?

16 MR. CUTLER: Well, talk to your fellow Senators. Talk
17 to Mr. Petris.

18 SENATOR MELLO: You made the statement. I just wanted
19 to let you know that he hasn't spent more than about 10 minutes
20 with me. I just, as a courtesy, met him, and read about his
21 background. He hasn't lobbied me at all for anything. I just
22 met him, and I'm listening to the testimony.

23 MR. CUTLER: Well, perhaps he hasn't been quite as
24 thorough as I'd been led to believe, but I know he's spent a lot
25 of time with some of you and with your aides, and certainly with
26 many other people.

27 CHAIRMAN ROBERTI: Thank you very much, Mr. Cutler.
28

1 MR. CUTLER: Would you like my box of --

2 CHAIRMAN ROBERTI: Sure.

3 (Laughter.)

4 CHAIRMAN ROBERTI: Sergeant, give the box to Nancy
5 Michel.

6 MR. CUTLER: I do want you all to remember what the
7 state of respect was for the State Public Defender's Office when
8 Quinn Denver left it and when I left it.

9 CHAIRMAN ROBERTI: We'll make copies and return the
10 originals to you.

11 MR. CUTLER: You may have it. It's been gathering dust
12 for several years. I've been trying to think of a suitable thing
13 to do with it, and I think that setting the record straight at
14 this point is the best purpose that box could ever serve.

15 CHAIRMAN ROBERTI: Very well.

16 MR. ZALL: Senator, would you like me to say a few
17 words?

18 CHAIRMAN ROBERTI: I guess, yes, you should be entitled
19 to a couple of words, and then we'll go into Executive Session,
20 the Members of the Committee.

21 Mr. Zall.

22 MR. ZALL: Well, I can tell you that on the one hand,
23 having read what some of my supporters have said has not given me
24 a big head, because I have heard things today that were very
25 painful and distressing to me. I don't recognize myself in that
26 fashion.

1 I have not had anything to do with Mr. Cutler for some
2 five years. I'd like to think that I have grown, that I have
3 learned, that I readily admit that I have made mistakes. But I
4 think that I have the capacity to learn from my mistakes.

5 I have in front of my letters of support from people
6 that know my work that were judges before whom I appeared on the
7 Third District Court of Appeal: Justice Sparks. I did not
8 promote myself with him. Justice Sparks said:

9 "I've always found him to be an
10 articulate advocate and a serious
11 scholar of the criminal law, a
12 persuasive brief writer. Mr. Zall
13 has represented his clients in a
14 manner entirely consistent with
15 the highest traditions of the
16 legal profession. I am confi-
17 dent he would administer the
18 Office of the State Public
19 Defender with the same standards."

20 Justice Frances Carr. Justice -- former retired Justice Frank
21 Richardson. Justice Carr. Henry Ramsey. People that have known
22 me through my entire professional life.

23 I take one more minute, if I might.

24 I've been in the office for a long time. I have seen
25 lots of things. People that know Mr. Cutler, know myself, know
26 that there have been conflicts that go back very long in our
27 career.

1 He's entitled to his judgment. I don't doubt his
2 sincerity.

3 I have sought to, to the best of my ability, to respond
4 to the specific things. I have attached exhibits and so on and
5 so forth.

6 However, the people that have expressed their support,
7 both inside and outside of the office, I think are entitled to be
8 heard on this matter.

9 I said today that I believe that I possess the energy,
10 the industry, the intelligence, the lawyering skills, and the
11 administrative capacities to make an effective leader of this
12 agency.

13 It's true, in the last years and Chief Deputy, I was a
14 lobbyist, as you know, Senator. I tried, often unsuccessfully,
15 to lobby you on matters of concern to the office. I think I was
16 slightly more successful with Senator Petris, but I certainly
17 spent, admittedly, a lot of time with him and his staff and
18 others.

19 That was my job. I don't make any apology for that. I
20 tried, when I was lobbyist for this agency, to be the most
21 effective advocate I could on behalf of this office. I tried to
22 be the most effective advocate I could for my clients. I
23 sometimes wasn't able to do as well as I might.

24 Is there anyone among us that has not faltered? Is
25 there anyone among us that, on occasion, because of personal
26 matters -- and I allude to that in my letter, which I urge you to
27 read.

28

1 This has been a very trying period for me, my family. I
2 want to get on with the important work of this agency.

3 I am hiring good people. Please, if you like, look at
4 the resumes of those people. I make no apology for hiring Matt
5 Newman. I think he's an absolutely outstanding person, and
6 already we are in the process of changing some of the
7 long-standing problems of the agency.

8 I went to the Governor's Office and asked them to help
9 us out on our federal death penalty work. I don't undervalue the
10 importance of death penalty work, but this Supreme Court has
11 affirmed 15 of our capital cases. Some years ago, commitment was
12 given to follow those cases into federal court. That requires
13 enormous amounts of time and energy. That is the true reason, as
14 I told the Chief Justice Lucas, why we could not accept any more
15 cases this fiscal year. That's what's happening now.

16 Well, I'll leave it. I assure you that I have listened
17 to the passions expressed here.

18 I want to prove me critics wrong. I ask you to give me
19 an opportunity. I've had to make decisions. The decisions were
20 necessary. Time will only tell whether they are right, but I
21 absolutely believe that they were imperative, and I not sit back
22 and wait, as I could well have done so, for this confirmation
23 hearing; sit in my corner, follow Mr. Cutler's advice.

24 And as I said, I leave it in your hands, and I accept
25 your judgment with equanimity.

26 CHAIRMAN ROBERTI: Thank you very much, Mr. Zall.
27
28

1 I think, however, we're going to put this over for two
2 weeks, if the Members do not mind. Give us a chance to look into
3 the issues that have been raised, and anybody else who wishes to
4 testify. Then in two weeks, we'll take it up for a final vote.
5 Your time doesn't expire until March 8th.

6 MR. ZALL: Do you want me to have these people, like Ken
7 Wells, John Virga --

8 CHAIRMAN ROBERTI: Yes, I would suggest you have people
9 here.

10 MR. ZALL: -- Richard Walker.

11 CHAIRMAN ROBERTI: -- that you might want to testify. I
12 wouldn't guarantee it's necessarily necessary that they testify,
13 but maybe they should be here, yes.

14 MR. ZALL: Thank you, Mr. Chairman.

15 CHAIRMAN ROBERTI: Thank you very much, Mr. Zall.

16 (Thereupon this portion of the
17 Senate Rules Committee hearing
18 was terminated at approximately
19 5:30 P.M.)

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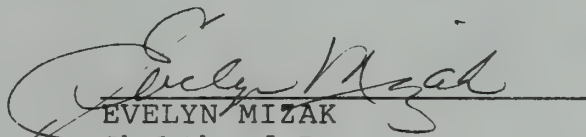
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January, 1989.


EVELYN MIZAK
Shorthand Reporter

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25
26 Evelyn Mizak
27 Shorthand Reporter
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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT K. BEST, Director
Department of Transportation

SENATOR QUENTIN KOPP

DAVID ACKERMAN, Former Under Secretary
Business, Transportation and Housing Agency

HAROLD MARTINEZ, Past President
Latin Business Association; Founder, Latin Business Foundation

LARRY MEEKS, Director
Office of Statewide Health Planning and Development

RONALD M. KURTZ, Executive Vice President
California Association of Health Facilities;
Former Executive Officer, State Personnel Board

RUBEN JAUREGUI, Former President
Latin Business Association; Former President, Latin Business
Foundation

ARNOLDO S. TORRES, Legislative Advocate
CAFE de California

NATALIA DELGADO, Representing the Southern Vice President
CAFE de California

APPEARANCES (Continued)

ERIC D. VEGA, Legislative Advocate
Mexican American Legal Defense and Educational Fund

AARON READ, Legislative Advocate
Professional Engineers in California Government

LARRY LOUDON, President
Professional Engineers in California Government

AUDREY MELIKIAN, Member
Board of Medical Quality Assurance
Division of Licensing

SENATOR ROSE ANN VUICH

KEN WAGSTAFF, Executive Director
Board of Medical Quality Assurance

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P R O C E E D I N G S

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2
3 SENATOR CRAVEN: Our Chairman and other Member, Senator
4 Petris, will be with us a little later, so we will begin.

5 Governor's Appointees appearing today, we'll begin with
6 Robert K. Best, Director, Department of Transportation.

7 Mr. Best, would you please come up and seat yourself
8 there. We'll ask you what we ask all of the nominees, why they
9 feel that they are qualified for this position to which they have
10 been nominated.

11 MR. BEST: Thank you, Senator Craven, Members of the
12 Committee.

13 I am Robert Best. I've been nominated by the Governor
14 for appointment as Director of Transportation.

15 Briefly I mention -- I'm sure you're all aware -- the
16 Department of Transportation is one of the largest departments in
17 the State with a very complex statewide program, and the job is
18 one of the more demanding jobs in the State because of both the
19 size of the management responsibilities, the scope of the
20 Department, and the complexity of the program.

21 My personal experience includes 28 years of work
22 experience now, including 5 years of active duty in the military,
23 and 12 years in the private sector as a practicing lawyer, and a
24 total of 11 years in State government, including this last year
25 as Director of the Department.

26 Prior to that, I was the Chief Deputy of the Department,
27 back about 12 years ago, for a period of a little over 2 years.
28

1 I have also held other management responsibilities in State
2 government in several different departments.

3 I think I bring to the Department a broad perspective,
4 not only my experience in government, but also my experience
5 outside of government, working with government from the outside.
6 That's important to this position; it's important to know the
7 Department and know its programs, and my experience has given me
8 that knowledge. And it's also important to have worked with the
9 private sector and the various levels of government throughout
10 the state, because the Department's programs interact daily with
11 other governmental agencies and with members of the private
12 sector as we're attempting to put the transportation programs
13 together. And I think that experience, along with my ability to
14 manage for results, is important at the Department at this time.

15 Closing these opening remarks, let me say I think we
16 bring to the Department three general policy objectives to be
17 pursued. One is to ensure that the program delivery capability
18 of the Department is honed to its finest point to ensure that the
19 projects are delivered as quickly and as effectively as possible,
20 to ensure that when there is transportation funding available,
21 that it is converted to improvements for the good of the people
22 of the State as quickly as possible. And that is a number one
23 ongoing priority with this Department, since it is a production
24 department, and it has a critical production program.

25 Another objective is, we have to look toward achieving a
26 long-term stable funding for the program. It is a long-range
27 public works program, and we need to be able to look well down
28

1 the line, beyond a few years, to plan out this program over the
2 long-range to ensure that we're working towards an appropriate
3 program for the State.

4 And lastly, I think we need to, in the next couple of
5 years, work very hard at defining the program and what the
6 program is trying to do, and get a clear picture of where we're
7 going and develop a cooperative approach between the State and
8 the various other governmental agencies throughout the State --
9 local governments, special districts -- that are all working with
10 us to deliver a transportation program.

11 If there are any questions, I'd be pleased to answer
12 them.

13 SENATOR CRAVEN: I might ask, do you have anyone who
14 wishes to testify on your behalf?

15 MR. BEST: Yes, Senator. There were several individuals
16 who had volunteered to testify in my behalf. I was told that
17 Senator Kopp was going to say a few words.

18 SENATOR CRAVEN: This is Senator Kopp right here, the
19 startlingly distinguished looking gentleman to my left.

20 Senator Kopp, would you be kind enough to sit here with
21 Mr. Best and make your remarks.

22 SENATOR KOPP: Thank you very much, Mr. Chairman,
23 Members of the Committee.

24 I'm sorry. I was in another committee meeting.

25 SENATOR CRAVEN: Perfectly all right, sir.

26 SENATOR KOPP: I would have liked to have presented
27 Mr. Best to the Committee as a sign of my confidence in his
28

1 abilities and my respect for his judgment, his scrupulousness,
2 and his sincerity in executing the duties of the office to which
3 he's been nominated.

4 He is industrious; he's highly intelligent, and he is
5 acutely familiar with transportation problems. And he is, above
6 all, motivated by a desire to get the biggest bang for the buck,
7 a buck which, as we all know, is diminishing.

8 He has an immense responsibility, and I believe that he
9 is fully capable of executing that responsibility. I recommend
10 his confirmation and a recommended confirmation to the Committee.

11 SENATOR CRAVEN: Fine, thank you very much, sir.

12 Mr. David Ackerman.

13 SENATOR MELLO: Mr. Chairman, while the Senator is here
14 urging confirmation, perhaps he'd like to comment along with
15 Mr. Best on what appears to be a discrepancy in your bill, your
16 bill and Senator Roberti's bill that was introduced, and his
17 approach as was in the Sacramento Bee on the 27th of January,
18 where to quote Mr. Best, it says that he's against:

19 "Band-Aid solutions ... that say
20 let's buy our way out of it cheap
21 ... let's just see what it takes
22 to get through another year"

23 "I don't think that 10-cent-
24 on-a-dollar approach is what this
25 state needs. It's going to be
26 squandering an opportunity. Now
27 is the time to look at generating
28 long-term solutions."

1 Now, does that mean he's supporting your bill or not
2 supporting your bill? I take it that he's not supporting your
3 approach.

4 SENATOR KOPP: Well, I haven't asked Mr. Best whether he
5 supports the bill, which just appeared in print yesterday.

6 Of course, if those comments are accurate quotations of
7 Mr. Best, Mr. Best is the best person to respond to that.

8 But I know in my conversations with Mr. Best, as I said
9 before, he recognizes the enormity of the problem and the task of
10 transmitting into implementation transportation facilities with
11 respect to which there are declining dollars.

12 There are various approaches to providing that money. I
13 think the best approach is embodied in the Roberti-Kopp bill,
14 SB 300. Others may have suggestions as to improvements or better
15 approaches.

16 But I don't interrupt those attributed comments by
17 Mr. Best to be at odds with the purpose of SB 300 or the intent
18 of SB 300.

19 SENATOR MELLO: Mr. Chairman, let me ask Mr. Best, then.
20 I want to preface my question then.

21 Every member of the Transportation Commission, I feel
22 we're in a quandary here because members of the Transportation
23 Commission say, "We're looking to the Legislature for some
24 direction. We're looking to the Governor for direction."

25 And I think we're really looking at the Department of
26 Transportation and the Commission for some direction. They're
27 the ones that are embodied with this responsibility.

1 As you say, as you told me and as you said here, the
2 STIP is underfunded by \$3½ billion right now based on your
3 statement, and I know that's the fact. The total projects that
4 are needed, I've seen figures run \$18 billion on up to 20 and
5 others.

6 It just seems like what's stopping a solution to all
7 these problems is, you know, Senator Kopp has his plan, and
8 you're looking for long-term; others are looking. Assemblyman
9 Katz is looking for a fee that's going to be --

10 SENATOR KOPP: Indexed.

11 SENATOR MELLO: -- indexed, yes. It'll go up even much
12 higher and so forth.

13 Why can't somebody provide the answer, the leadership,
14 so that we can get rid of this gridlock and get some roads built?

15 We in the Legislature, at least myself, I'm looking to
16 you for that kind of leadership to advise the Commission, then
17 come back and get the show moving.

18 Even in little counties like Santa Cruz, which is the
19 second-smallest county in the State, people are getting short-
20 tempered now because of the gridlock that we're facing; just a
21 standstill. We just can't move, let alone in metropolitan areas.

22 MR. BEST: I certainly understand that, Senator Mello.

23 Let me mention, I appreciate Senator Kopp being here
24 today. He's a true gentleman and a scholar to be here, but we
25 probably will have some disagreements.

26 But the comments that were made there were not directed
27 at the Kopp-Roberti proposal. In fact, that is a long-term
28

1 proposal. They are looking well down the line at financing not
2 only the problems at the State level, but also at the local level
3 and transit. And it is a comprehensive viewpoint of the kind we
4 are looking for; although, of course, there will be disagreements
5 as to how to put that together.

6 The 10-cent-on-a-dollar reference there was not
7 referring to a 10 cent gas tax increase. It was referring to the
8 unfortunate tendency sometimes to try to just put in only 10
9 percent of what we need to just buy a little bit of relief rather
10 than addressing the full scope of the problem.

11 I think it's clear from both the proposals we've seen
12 from the Senate and the Assembly side that the general attitude
13 is to address the problem in its full scope.

14 I agree that leadership is necessary, and I think -- I
15 hope to help play a role in getting the various viewpoints put
16 together. And I think as the Senator knows, the Governor has
17 scheduled a meeting for February 8th to bring the various
18 viewpoints together with the avowed purpose of that meeting to
19 look for the kind of common ground where we can generate some
20 beginnings of an agreement, or beginnings of an ability to work
21 toward achieving an agreement, for a long-term solution to the
22 transportation funding issue.

23 I'm very optimistic in seeing the proposals out of the
24 Senate and the Assembly, and listening to what we are proposing
25 through the administration and seeing the amount of similarity
26 that's there and the kind of thinking that's going on.

27
28

1 SENATOR MELLO: Mr. Chairman, I have some further
2 questions, but I'll wait until Mr. Best gets his proponents to
3 testify.

4 SENATOR CRAVEN: Very well.

5 Thank you, Senator Mello.

6 Thank you, Senator Kopp.

7 SENATOR KOPP: Thank you, Mr. Chairman and Members of
8 the Committee.

9 SENATOR CRAVEN: Next we call on Mr. David Ackerman,
10 former Under Secretary of the Business, Transportation and
11 Housing Agency, and a well-known former high level staff man in
12 the Legislature today.

13 MR. ACKERMAN: Thank you, Mr. Chairman and Members of
14 the Committee.

15 It's a distinct honor that I appear here today before
16 you in favor and support of Bob Best's nomination and
17 confirmation as Director of the Department of Transportation. I
18 do so in my capacity as former Under Secretary and Deputy
19 Secretary of the Agency which oversaw the operations of the
20 Department of Transportation.

21 I served in that capacity from 1983 through 1985, so I
22 did establish some familiarity with the demands that are placed
23 upon a Director of that Department, and the difficulties of
24 dealing with an employment base of some 15,000 employees, and the
25 necessity for the appropriate administrative skills to manage
26 that Department.

27

28

1 My personal association with Bob goes back to 1973, some
2 10 years earlier, when I served on the legislative staff, as
3 Senator Craven indicated. And I must say that I had an excellent
4 relationship in working with Bob then on the Caltrans budget
5 cycle as we began, and that was in fact the same year Caltrans
6 began in the budget cycle with the Legislature, as you recall,
7 with Assembly Bill 402, which did put the entire Transportation
8 budget into the budget process. During that time, Bob exhibited
9 both the professional integrity and the professional capability
10 necessary to assume the directorship.

11 Most recently, though, I think in pertaining to the
12 considerations that you're looking at, Bob headed the transition
13 team for the entire Business, Transportation and Housing Agency.
14 When Kirk West and I were appointed to positions in that Agency,
15 Bob basically walked us through the first two to three months of
16 operations in the transition from one administration to the next.
17 He handled those assignments in the most professional, most
18 capable manner, and in fact, we had virtually no glitches between
19 the two administrations. I think that was all due to Bob's
20 efforts.

21 The Department of Transportation is a very complex, and
22 I think, Senator Mello, as you pointed out in your comments, we
23 probably have one of the most serious problems facing California
24 in transportation today. In my dealings with Bob over the last
25 year, especially with organizations I represent now as a
26 legislative advocate in the contracting areas, the highway
27 construction fields, the California Chamber of Commerce and
28

1 others, we have the utmost confidence in Bob and his ability.
2 And he's exhibited this with us in our dealings privately with
3 him over the last year or so. So, we have -- his door has always
4 been open to us. He has, in fact, invited us in, unsolicited,
5 for meetings and seeking our counsel and guidance, and in that
6 capacity we feel that he will pursue that same approach in
7 solving the State's surface transportation financing problems.

8 I personally wholeheartedly endorse his nomination for
9 Director and urge your confirmation of that position.

10 CHAIRMAN ROBERTI: Thank you, Mr. Ackerman.

11 Any other questions? Thank you very much.

12 MR. ACKERMAN: Thank you, Senator Roberti.

13 CHAIRMAN ROBERTI: The next witness on the list is Mr.
14 Harold Martinez, past President of the Latin Business
15 Association, founder of the Latin Business Foundation.

16 MR. MARTINEZ: Good afternoon, Mr. Chairman, Members of
17 the Senate, ladies and gentlemen.

18 My name is Harold Martinez, and I am the President of
19 Able Industrial Products and the representative for the Latin
20 Business Association to the Caltrans Civil Rights Advisory
21 Council.

22 I am here representing the support for Mr. Best from the
23 following organizations: the Northern California Council of
24 Black Professional Engineers; the Asian American Architects and
25 Engineers Association; the National Association of Black
26 Consulting Engineers; the Black Chamber of Commerce; the Asian
27 Business Association; the Women's Construction Owners and
28

1 Executives; the California Indians Contractors Association; the
2 Black Business Association of the Bay Area; the Black Business
3 Association of Los Angeles; the Latin Business Association; the
4 Hispanic Professional Association of Greater Bay Area; the
5 Chicano Federation of San Diego; the California Association of
6 Minority American Contractors; the United Minority Business
7 Entrepreneurs; the Latin Business Foundation; and the Alliance of
8 the Latino Businesses.

9 I am also the former President of the Latin Business
10 Association and the founder of the Latin Business Foundation.

11 In my capacity as the owner of Able Industrial Products,
12 I am what is commonly known as an owner of a minority business
13 enterprise, MBE. As an MBE, and through my long association with
14 other members of the Latin Business Association, I have been
15 witness to an abundance of government programs that were designed
16 to assist minority business in achieving economic success by
17 participating in the so-called great American scheme of free
18 enterprise.

19 Unfortunately, these programs only create more problems
20 and give credence to the old adage of the most unbelievable line
21 being, and I quote, "I am from the government, and I am here to
22 help you," end quote.

23 In my opinion, the programs, although well-conceived,
24 were doomed for failure because too often the people selected to
25 run them were either not qualified, or they did not seek or have
26 the support and backing of those who were critical to the success
27 of the program. In many cases, the program players were selected
28

1 on the basis of achieving some number parity and not on the basis
2 of the best candidate to assume success of the program.

3 The end result of such a selection process was that the
4 people running the program were regulated to the role of buffers
5 between the people the program was designed to help, and the
6 people responsible for eliminating the problem that necessitated
7 the program.

8 Ladies and gentleman, as a small businessman, I know to
9 be successful, I must select my employees on the basis of the
10 best person for the job, since results determine whether or not
11 you stay in business. I believe that in order to do away with
12 situations such as the one that I just described, we must select
13 people to head programs based on ability and dedication.

14 I am not saying that we should do away with efforts to
15 achieve parity in employment. Rather, we should make sure that
16 in our thrust to achieve quotas, we do not endanger the
17 objectives of the program.

18 As a member of the Caltrans Advisory Council, I have had
19 the opportunity to examine Mr. Best's qualifications, as well as
20 meeting with him to listen to his views on minority business
21 problems. His commitment to increase minority participation in
22 employment and contracting assures not only the business
23 community, but the total community at large that we have a leader
24 whose objective is to comply with the wishes of the Legislature
25 in the programs that he will administer.

26 I, as well as 16 other representatives of the minority
27 business groups from throughout the state, are convinced that
28

1 Mr. Best is result-oriented and has the sensitivity for the
2 problems that all small businesses face.

3 At our Caltrans Advisory Council meeting on Friday,
4 January the 20th, 1989, a motion was made and unanimously passed
5 to support Mr. Best in his nomination to be Director of the State
6 Department of Transportation.

7 Mr. Chairman and Members of this Committee, on behalf of
8 my colleagues throughout the state, I ask for your support in
9 confirming Mr. Best as the Director of the Department of
10 Transportation.

11 Thank you, ladies and gentlemen, for allowing me to
12 express an opinion felt by many in the world of small and
13 minority businesses.

14 CHAIRMAN ROBERTI: Thank you, Mr. Martinez.

15 Senator Petris.

16 SENATOR PETRIS: Do any of these 16 groups do business
17 with the State?

18 MR. MARTINEZ: I believe they do.

19 SENATOR PETRIS: Does your company do business with the
20 State?

21 MR. MARTINEZ: No, sir.

22 SENATOR PETRIS: You don't know what percentage of the
23 others do?

24 MR. MARTINEZ: Yes, I do. I have that information.

25 SENATOR PETRIS: Roughly, is it all of them; half of
26 them?

27

28

1 MR. MARTINEZ: There is a small percentage; not all of
2 them.

3 SENATOR PETRIS: Small.

4 MR. MARTINEZ: Yes.

5 SENATOR PETRIS: You're aware that the minority
6 businesses, since they're under the category of small business,
7 most of them, are eligible for a preference with the State in
8 competition with out-of-state companies. They get a certain 5 or
9 10 percent advantage over out-of-state companies.

10 MR. MARTINEZ: That is true in the face value, but
11 there's an awful lot of obstacles to that for the simple fact of
12 the bonding obstacle in itself, so that 5 percent preference
13 really doesn't go a long way, especially when you're competing
14 against out-of-state contractors that really don't need that 5
15 percent preference per se.

16 Many of the members are very frustrated that the 5
17 percent preference is always taken in a way that they're being
18 given something for nothing.

19 SENATOR PETRIS: They feel it's not working?

20 MR. MARTINEZ: It's not working.

21 SENATOR PETRIS: Should we get rid of it?

22 MR. MARTINEZ: No, we should work on it. We should use
23 that as a platform and try to design it for the best interests of
24 the California taxpayers.

25 SENATOR PETRIS: Now, can you further explain your
26 feeling about parity? We have an official terms for it. I think
27 it's labor force parity, or something like that. It's part of
28 affirmative action.

1 You're saying you're not opposed to that, but you want
2 to emphasize the eligibility and qualifications and quality.

3 What is your view about this whole parity thing? Should
4 we have it or not?

5 MR. MARTINEZ: Yes, I believe we should have it on the
6 basis of the individual's merits and his past record.

7 SENATOR PETRIS: Do you think there are enough people in
8 the Hispanic community to fill all the slots that are available
9 at the State level in the Department of Transportation, for
10 example?

11 MR. MARTINEZ: Without question.

12 SENATOR PETRIS: Do you have enough engineers?

13 MR. MARTINEZ: We're getting there.

14 SENATOR PETRIS: Do you have typists?

15 MR. MARTINEZ: Definitely.

16 SENATOR PETRIS: Are you aware that the Department has
17 the lowest score in complying with the State policy laid down by
18 statute and the State Personnel Board to achieve parity?

19 MR. MARTINEZ: Yes, I am.

20 SENATOR PETRIS: How do you account for it? Is it based
21 on lack of quality and eligibility?

22 MR. MARTINEZ: No, it's a combination of things. One,
23 it's based on our people not participating in the State
24 employment opportunities.

25 SENATOR PETRIS: Is that through lack of information?

26 MR. MARTINEZ: Lack of information and education.

27 SENATOR PETRIS: Can you help the Department with that?
28

1 MR. MARTINEZ: I have volunteered to do so.

2 SENATOR PETRIS: Are you going to work with Mr. Best?

3 MR. MARTINEZ: Yes, I will if he wants me to.

4 SENATOR PETRIS: Fine. Thank you.

5 CHAIRMAN ROBERTI: Thank you, Mr. Martinez.

6 MR. MARTINEZ: You're welcome.

7 CHAIRMAN ROBERTI: Mr. Best, has the Department set up
8 timetables and goals to achieve the redress of the imbalance on
9 minority hiring or hiring of women?

10 MR. BEST: The Department has had the timetables and
11 objectives for a number of years, and they have worked generally
12 well in the sense of getting a balanced workforce in the
13 Department. In fact, the Department is below labor force parity
14 for Whites right now.

15 But the one glaring standout provision that has not
16 worked well is in Hispanic hiring. The Department is
17 dramatically below labor force parity in Hispanic hiring.

18 And it is very clear at this time that utilizing the
19 standard affirmative action approach that we've used in the past
20 of setting goals and objectives and timetables -- it's been going
21 on for a number of years in the Department -- it hasn't redressed
22 the problem. It has helped in the sense that the Department
23 shows a consistent history of increasing its Hispanic hires and
24 increasing the percentage of Hispanics in the workforce every
25 year in the Department's workforce, but it still has this
26 substantial gap.

27

28

1 So, I have been talking with several people, including
2 Harold Martinez and others, about getting some help from outside
3 the Department in terms of evaluating the programs that we have,
4 because we're going to have to do some things that are beyond
5 normal, beyond the routine, and take some dramatic steps if we're
6 going to attack the significant imbalance we have in the Hispanic
7 under-representation.

8 CHAIRMAN ROBERTI: Are you going to various colleges,
9 universities, letting them know what career opportunities may be
10 available?

11 MR. BEST: We have --

12 CHAIRMAN ROBERTI: Professional schools, whatever?

13 MR. BEST: We have programs at the student level, where
14 we go in and recruit minority engineering students and offer them
15 summer jobs to get their interest in Caltrans at an early age.
16 We target our college recruitment, and have for a couple of
17 years, into institutions that have Hispanic enrollments.

18 Unfortunately, that's been going on for several years,
19 and what it shows is a gradual increase, a gradual betterment,
20 which is not making substantial, large incremental steps towards
21 redressing the problem we have.

22 CHAIRMAN ROBERTI: Thank you.

23 The next witness is Mr. Larry Meeks, Director of the
24 Office of Statewide Health Planning and Development.

25 MR. MEEKS: Thank you, Senator.

26 For the record, my name is Larry Meeks. I'm the
27 Director of the Office of Statewide Health Planning and
28 Development.

1 It's a privilege and a pleasure to be here to speak in
2 behalf of Mr. Robert Best.

3 I've known Mr. Best since 1972, and at that time I was
4 an employee of the Department of Transportation. And I've always
5 known him not only to be an excellent manager, but to be a man of
6 a great amount of integrity, and an individual who cared about
7 the employees of his department.

8 I was listening to the witnesses talking and seemingly
9 that the affirmative action is something that is being brought
10 forward here; that's in the Department.

11 I remember not long after he was appointed Director,
12 that Bob called me on the phone and said, "Larry, I have a
13 problem in my Department with the Hispanic hires in the
14 Department." He says, "What do you think I should do?"

15 And I said, "Well, Bob, in my opinion what you need is a
16 dynamite Civil Rights Officer," I said, "like the one I have in
17 my Department, because I have one of the highest Hispanic and
18 minority hires in State government."

19 And he asked, "What is your Civil Rights Officer's
20 name?" And I wouldn't tell him. And the scoundrel hired my
21 Civil Rights Officer not too long ago. I think it was about two
22 months ago I lost my Civil Rights Officer, and he hired the
23 individual.

24 One of the things that I know works in this particular
25 area is when you have people in there who care; people who want
26 to do something and make a change. When you have the direction
27 come from the top of the Department and say, "I want this," it
28

1 finds a way to filter down, and you have some people in the
2 Department who are committed to carrying this out, then these
3 kinds of things take place.

4 I will be the first to admit it's difficult. It's
5 difficult to find minorities in the areas in which he does a lot
6 of the hiring: the engineering, architecture. In these
7 particular areas, it's very difficult because there are not that
8 many graduates coming out of school, but there are some out
9 there, and it takes a very, very aggressive program.

10 I say that Mr. Best cared about the employees. When I
11 was there, I was just an analyst at the time when I was in there,
12 and I had the occasion to run into Mr. Best. I had to present
13 something to him when I was an employee. And he sat me down in
14 his office when he was Chief Deputy Director, and he said,
15 "Larry, I don't know what your aim is in life or in government,
16 but my suggestion to you is this." And he completely laid out a
17 game plan for me.

18 And I thought for somebody at his level to be speaking
19 to somebody at my level at that particular time, I thought that
20 took a person of a great amount of caring to do something like
21 that.

22 I've known him through the years to be that sort of a
23 man, and I think if I had to choose the individual to be Director
24 of that Department, I couldn't think of a better individual.

25 I sincerely urge his confirmation and your vote for him.

26 I'd be happy to answer any questions if you have any.

27 CHAIRMAN ROBERTI: Thank you very much, Mr. Meeks.
28

1 Any questions of Mr. Meeks? Thank you.

2 MR. MEEKS: Thank you.

3 CHAIRMAN ROBERTI: The next witness is Mr. Ronald Kurtz,
4 Executive Vice President of the California Association of Health
5 Facilities and former Executive Officer of the State Personnel
6 Board.

7 MR. KURTZ: Thank you, Senator.

8 I approach this hearing from a somewhat different
9 perspective. I'm the person who found Bob in Southern California
10 and hired him to come to work as a State employee, as a civil
11 servant, some 25 or 30 years ago.

12 Since that time, I've supervised Bob; I've worked with
13 him as a peer, and watched him work in other programs.

14 I know Bob to be perceptive with respect to policy,
15 sensitive to human values, as I think has been demonstrated; to
16 be very much a hard-nosed, results-oriented manager, and to be
17 exceptional as a long-range planner.

18 I can't -- I worked with him as a peer in Caltrans, and
19 it's hard for me to think of anyone who would be more suited to
20 be Director of this Department than Bob.

21 CHAIRMAN ROBERTI: Thank you very much, Mr. Kurtz.

22 Any questions? Hearing none, thank you again.

23 That concludes Mr. Best's witnesses -- oh, excuse me.
24 Mr. Ruben Jauregui.

25 MR. JAUREGUI: Good afternoon, Mr. Chairman, Members of
26 the Committee. Thank you for allowing me to testify today.

27

28

1 My name is Ruben Jauregui, and I'm the past President of
2 both the Latin Business Association and the Latin Business
3 Foundation headquartered in Los Angeles. I'm here in conjunction
4 with Mr. Harold Martinez.

5 In addition, I currently serve -- also serve as a
6 volunteer member of the Advisory Council to the Office of Civil
7 Rights of Caltrans.

8 The Latin Business Association is made up of Hispanic
9 business owners from throughout the country, with about 95
10 percent of those businesses headquartered in California. Taken
11 together, the LBA's member businesses employ some 10,000
12 Californians and are engaged in a broad cross-section of
13 business, including but not necessarily limited to:
14 manufacturing, waste management, high tech., distribution, food
15 processing, construction, engineering, and all of the
16 professions.

17 As a member of the Caltrans Advisory Council, I've had
18 an opportunity to observe Caltrans procurement processes at close
19 range and to raise any concern I deem to be in the best interests
20 of Californians, and most especially, Californians of Hispanic
21 descent. My involvement in that process makes me proud to be
22 associated with an organization which has achieved the highest
23 level of minority-owned business participation of any State
24 transportation department in the Union. Much of the credit for
25 that achievement can properly be given to Mr. Robert Best, a
26 gentleman who, for the past ten months, has led the Department as
27 its Director.

28

1 While not a prime concern of Hispanic business, the
2 Department's historical under-representation of Hispanics in
3 employment is, nevertheless, an extremely important
4 consideration. With specific reference to Mr. Best's role in the
5 Department's shortcomings in the Hispanic employment arena, it's
6 one which he has inherited. He has recognized the problem and
7 has begun a substantive dialogue with organizations and
8 individuals from the Hispanic community in an effort to correct
9 the problem. He is committed to the correction of same, and we
10 support that.

11 Accordingly, I urge your approval of Mr. Best's
12 nomination to the office of Director of the California Department
13 of Transportation and respectfully request your confirmation.

14 CHAIRMAN ROBERTI: Thank you very much, Mr. Jauregui.

15 Any questions? Seeing none, thank you.

16 MR. JAUREGUI: Thank you.

17 CHAIRMAN ROBERTI: Is there any opposition in the
18 audience? Anybody who would like to testify not necessarily in
19 opposition? Please come forward.

20 MR. TORRES: Thank you very much.

21 My name is Arnoldo Torres, and I'm the legislative
22 advocate for CAFE de California, which is the State's largest
23 Hispanic State employee association.

24 With me on my left is Ms. Natalia Delgado, who is
25 representing our Southern Vice President, Mr. Marshal Diaz, and
26 will discuss in pretty good detail some of the not anecdotal
27 examples, but solid examples of the types of difficulties that
28 Hispanics continue to encounter with regards to hiring.

1 We're here today not to indict Mr. Best at all. In
2 fact, we acknowledge and appreciate very much the fact that
3 fellow Hispanics in the business community have in fact come up
4 today to indicate their support of him. It underscores the fact
5 that they feel a great deal of confidence in him, or they have a
6 great deal of confidence in him, and they are very supportive of
7 that.

8 We'd also like to acknowledge at least one of the major
9 reasons why we believe he's doing so well in the business area is
10 because of one of their employees, who happens to be a Hispanic,
11 Mr. Edmundo Lopez, whom we regard to be an extremely aggressive
12 person to go out and really hustle and really push for Hispanic
13 business to get those contracts.

14 I also want to compliment the Legislature, as well as
15 the federal government, for putting emphasis on the minority
16 contracting. Some of these programs that we have now
17 administered by the Department are in fact a direct result of the
18 initiatives that you all have undertaken to encourage and push
19 for more hiring or more subcontracting to minority businesses,
20 including Hispanic.

21 Last year in April, the organization of CAFE deviated
22 somewhat from its traditional approach to dealing with hiring of
23 Hispanics. Historically we had always used the carrots, or the
24 big stick, and the loud concerns. This time we took a totally
25 different approach. We decided to go through the legislative
26 process, and with the report language that you, Mr. Chairman, Mr.
27 Roberti, introduced into the budget in 1987-88, we used that as a
28

1 platform and basically met with the Department of Transportation,
2 and basically tried to develop an approach that would make some
3 basic improvements in that Department's hiring of Hispanics.

4 We met with Ms. Carolyn Ewing. We met with their
5 affirmative action officer. We met with their Hispanic
6 employment coordinator on two occasions, I believe; it could have
7 been even three.

8 In our first meeting, we indicated to Ms. Ewing that we
9 wanted to inevitably meet with the Director because it was our
10 practice that in our last meeting, when we would actually make
11 recommendations, we wanted the Director to be involved in that
12 meeting.

13 Unfortunately, Mr. Best was not available, but
14 unfortunately no one from the Department ever got back to us,
15 even though we did make that request.

16 We did meet, nonetheless, with four other Department
17 directors. The only ones that we weren't able to meet with was
18 Mr. Best and Mr. Honig at the Department of Education.

19 But again, we do not regard this as an intended attempt
20 on Mr. Best's part to snub us or anything, because he did come to
21 our convention or our conference in September and made some very
22 strong and positive statements with regards to hiring.

23 However, the facts remain the following. In last year,
24 in the budget process, we attached supplemental report language
25 requiring six departments to submit affirmative action reports
26 that identified specific areas of concern to us on Hispanics and
27 other under-represented groups in this Department of
28

1 Transportation. This report was to be submitted for evaluation
2 and recommendations to the Legislature by the State Personnel
3 Board.

4 We have the report in front of us, and the Governor has
5 not formally released it, but we do anticipate that he will after
6 Mr. Best is confirmed by this Committee or voted out of this
7 Committee.

8 Let me read to you some of the excerpts from this
9 report:

10 "Hispanics are significantly under-
11 represented departmentwide with a
12 deficiency of 952 ..."

13 These figures are different now. On the table that I gave you,
14 it is the actual figure now is 964 positions.

15 "... needed to reach labor force
16 parity. This is the largest numerical
17 deficiency of all State departments.
18 This under-representation is almost
19 a quarter of all Hispanic deficiencies
20 in State government."

21 The report goes on to list what the Department submitted
22 as its plan, and it identified many of the things that we in fact
23 asked for in our language.

24 SENATOR CRAVEN: Mr. Chairman.

25 CHAIRMAN ROBERTI: Yes, Senator Craven.

26 SENATOR CRAVEN: Mr. Torres, if I may interrupt, please.

27 MR. TORRES: Yes.
28

1 SENATOR CRAVEN: What Mr. Torres is saying today is, as
2 he says at any given time, it's always excellently prepared and
3 well articulated.

4 MR. TORRES: Thank you.

5 SENATOR CRAVEN: However, it's my recollection that Mr.
6 Best at the outset made a rather long statement relative to
7 Hispanic hires, and his recognition of the problem, his attempt
8 to correct, and so forth.

9 I think what Mr. Torres is doing is, in effect, shoring
10 up these statistics which, seemingly, are well-known by Mr. Best.

11 I was just wondering whether we're spending time on
12 something that in effect both Mr. Best and myself are willing to
13 stipulate.

14 MR. TORRES: Mr. Craven, please excuse me if I'm trying
15 -- if the impression is that I'm trying to beat a dead horse. It
16 isn't. That's not my intention.

17 SENATOR CRAVEN: No, I don't look upon it as beating a
18 dead horse.

19 MR. TORRES: What I wanted to do was to underscore some
20 things that are beyond the statistic issues. And that's what I
21 was just about to get into.

22 SENATOR CRAVEN: Okay, then I'm sorry to have
23 interrupted you.

24 MR. TORRES: No, that's fine, Mr. Craven. I understand.

25 One of the most important things is that the affirmative
26 action plan conceptually makes some very good statements. In
27 fact, the report indicates that:

1 "The above goals and action steps,
2 if achieved, would greatly improve
3 Hispanic representation in the
4 Department. The proposed goals and
5 action steps appear to be targeted
6 to address the Hispanic deficiencies.
7 However, considering the actual
8 past track record of the Department,
9 we believe that the specific action
10 steps lack sufficient detail to
11 ensure goal achievement."

12 What we're trying to say, Mr. Craven and Members of this
13 Committee, is that there have been very strong statements and
14 very supportive statements. There has been an acknowledgment of
15 the problem, and there has been the support statements of that
16 something needs to be done.

17 Unfortunately, unfortunately, despite the intents on our
18 part to go over this process in grave, painstaking detail, what
19 we have is very few actual practical steps to deliver the
20 product. We're not saying that progress can and will be made in
21 a year. We're not saying that the deficit can be made up in five
22 years.

23 What we're saying is that historically this Department,
24 not under exclusive stewardship of Mr. Best, but this Department
25 has not, throughout its system, has been unable to effectively
26 address the problem, despite repeated recommendations on CAFE's
27 part, despite the Hispanic advisory group's intention, despite
28

1 the Equal Employment Opportunity Committee participation, despite
2 all of these nice, positive efforts. Substantively, we're unable
3 to deliver.

4 Now, Ms. Natalia Delgado would like to give some
5 examples of the extent of that problem. Again, it is not a
6 statistical war. We would like to make the following
7 recommendation to you to consider as Ms. Delgado makes her
8 presentation.

9 We are not asking that this Committee hold this
10 nomination up in this Committee. We are asking that this
11 Committee suggest or direct that we, myself or our organization,
12 better yet, Mr. Best, and anyone else in his Department or any
13 one other Hispanic group that he wants to involve, sit down and
14 begin to, in the great detail that we've got to do this if we're
15 going to make the inroads that we want to make and need to make,
16 and everybody acknowledges must be made, we would like for this
17 Committee to hold up that confirmation on the Floor until such
18 time as we can come back and actually give what all the parties
19 have agreed to to this Committee, to the Chairman of this
20 Committee, so that we can say, "Yes, we do have a plan of action
21 that's going to move forward."

22 Now, that is our request, and at this time I'd like to
23 have Ms. Delgado give some of the examples of the specific
24 difficulties that we continue to have in this Department.

25 SENATOR PETRIS: Question, Mr. Chairman.

26 CHAIRMAN ROBERTI: Senator Petris.
27
28

1 SENATOR PETRIS: Before the next witness starts, in that
2 connection, the supplemental language, I'm familiar with it,
3 having worked on the same thing in the education system in our
4 subcommittee.

5 The supplemental language in the budget requires the
6 Department to develop and submit to the State Personnel Board a
7 detailed plan by October 1, '88.

8 Do you know if that plan has been filed?

9 MR. TORRES: Yes, sir. It was filed, and we do applaud
10 the Department of Transportation for meeting the time-frames that
11 were in the language.

12 SENATOR PETRIS: So there is a plan in place that you
13 regard is going in the right direction?

14 MR. TORRES: Again, only conceptually.

15 SENATOR PETRIS: What you're looking for is the
16 practical, on the ground, actual steps to go in that direction?

17 MR. TORRES: Exactly.

18 SENATOR PETRIS: Thank you.

19 MS. DELGADO: Mr. Chairperson, Members of the Committee,
20 I want to thank you for this opportunity to testify. I will
21 attempt to be brief.

22 I'm going to give you some instances of opportunities
23 that the Department of Transportation has had to make Hispanic
24 hires. Unlike Mr. Martinez, I happen to know that there are
25 people that are reachable. People have been interviewed, and
26 I'll give you some concrete instances of positions, et cetera. I
27 will not give you names, of course.
28

1 Also, very recently we held a State Personnel Board
2 hearing in the City of Commerce. The Department of
3 Transportation was one of the departments that was there to talk
4 about the under-representation and the kinds of steps that they
5 would take to correct this. The Director did not attend the
6 State Personnel Board hearing. Instead, he chose to send another
7 director from one of the districts, who was ill-prepared, not
8 supportive, and not knowledgeable of affirmative action.

9 That would be indicative, at least it was our
10 perception, that there was no real commitment to affirmative
11 action.

12 Now, let me give you some of the concrete examples that
13 transpired subsequent to that hearing. There was a recent
14 opportunity to hire an Hispanic affirmative action officer in Los
15 Angeles. There were Hispanics that were reachable on the list
16 that could have been hired, people with very high qualifications
17 that had had statewide experience in affirmative action,
18 districtwide experience in affirmative action, Bachelor's,
19 Master's. I mean, they were very well prepared. Budgeting
20 experience, et cetera.

21 We did not select an Hispanic. This was very recent. I
22 don't have the dates, but it's very recent. That can be -- you
23 can check on that.

24 Also, there was a recent opportunity to hire a manager
25 for the personnel office, again in Los Angeles. Hispanics
26 interviewed very highly qualified. One of the former ones that I
27 mentioned having applied for the affirmative action office was
28

1 not selected, but at that time I think there were at least three
2 in the candidate pool. So, there is that candidate pool
3 available which is not always utilized.

4 Again, I know there are areas where we are not there,
5 but that's not what we're talking about. We're talking about
6 where we are reachable and knowledgeable, and that we are not
7 given the opportunity.

8 It also recently came to my attention that there were
9 interviews held for clerical areas where they said that there not
10 sufficient Hispanics, and the ones that were there were not
11 competitive. Now, we know that it doesn't take a whole lot to be
12 competitive in terms of clerical employees.

13 There was also a very highly qualified employee, and the
14 letter is here, of an individual that applied to one of the
15 district offices for a secretarial position with a lot of
16 experience, has worked in the corporate level, was making -- went
17 -- said she was not contacted after putting in an application.
18 Then she went on to try to find out what was going on and left,
19 and went to the private sector to make a lot more money.

20 Now, that would not be indicative of the fact that there
21 is not anyone there available.

22 Very recently, there was a position filled for a
23 Superintendent III, which is your manager position in the
24 maintenance areas. The individual selected was told that he was
25 being selected even though his leadership skills were deficient,
26 and that he would have an opportunity, during the period of
27 probation, to prove whether or not he was capable.
28

1 Now, we all certainly understand that it is appropriate
2 to utilize the probationary period for that purpose; however, if
3 an individual has been in the system and has reached this point,
4 and is not knowledgeable, is deficient in terms of leadership,
5 and yet this individual has been in a leadership capacity where
6 he has been supervising many people, then I again think there is
7 a problem there. And it's also going to put him at a
8 disadvantage when he has to go through the stress of knowing that
9 he may be failed on probation because there is a considered
10 deficiency.

11 Within the last week, there were interviews for graphic
12 artists. Again, this is in Los Angeles. We had an Hispanic
13 student available who has been in the system for three years,
14 working as a student assistant. He will be receiving his
15 Baccalaureate in June. He has been working in this district,
16 like I said, for three years, but we had an opportunity to place
17 him on a temporary appointment. All we needed to do was to
18 request it and put him on there. He went to the personnel office
19 and asked to be placed on a TAU. They told him it was not
20 possible. Instead, he was told to go to San Diego and take an
21 examination, where of course they are trying to get their own on
22 the list. He ended up in the fifth place, was subsequently
23 interviewed last week, was not picked up.

24 Now, in the private sector, if we spent the time and the
25 money to train an individual for three years and let them go, I
26 mean, that doesn't seem like a very wise investment to me. And I
27 don't think that a businessman -- and I have a son that is a
28

1 businessman -- would do such a thing, but instead, when you have
2 made an investment, you would try to make sure that you had
3 picked up that investment, particularly a young man of this
4 caliber. He's also received a lot of recognition for a mural
5 that he painted on the Century Freeway corridor, also some work
6 that he's done in Arizona. He's been in magazines. He's been
7 recognized for the work that he's done, and yet he's not actually
8 good enough to be hired as a graphic artist.

9 One of the things that we would like to request is an
10 audit of the criteria for evaluation as well as the people
11 applying for TAUs and who they were granted to.

12 There was a recent, again, within the past couple of
13 weeks, appointment of an Accounting Administrator II. The
14 individual, a White male, was upgraded in place. Legal of
15 course; no problem with that. However, the position was not
16 advertised, so that excluded minorities from at least
17 participating in the process.

18 See, we're not asking to be selected if we aren't
19 qualified. We are asking for an opportunity to at least
20 participate in process.

21 Now, there was a lawsuit quite a few years back with
22 someone who had applied to the Department of Transportation and
23 was denied the opportunity to participate in the process. And
24 the individual in question won the lawsuit and lots of back pay.

25 Now, these are areas, you know, that we're trying to
26 assist you so that doesn't occur again.

27

28

1 At a recent meeting, according to knowledgeable sources,
2 the Director in Los Angeles announced that positions don't have
3 to be advertised because it takes too long.

4 How can we recruit if there is no advertising? Does
5 that constitute good faith efforts on the part of Caltrans to
6 correct under-representation of Hispanics?

7 All we want to do, like I said, is at least participate
8 in the process.

9 We have a lot of good programs on paper. I am well
10 aware of them. I worked with Caltrans for 25 years, so I am
11 familiar with some of these programs. All we have to do is
12 implement these programs, because we do have good policies, but
13 they need to be followed.

14 I think basically that's what we're requesting, that
15 these good policies that are there be implemented, that we have
16 opportunities to participate in the selection process and in the
17 system.

18 We believe that in many areas, the system has not worked
19 on our behalf.

20 MR. TORRES: In closing, Members, again there is a
21 number of recommendations that we have. I don't want to take up
22 your time because they are very detailed and technical, but they
23 are -- we hope to make them with Director Best. And we would
24 like to have you, again, give that direction to all of us to
25 actually work something out.

26 Again, the approach that we will take is not short-term.
27 We don't expect an extremely quick success rate, but we do expect
28

1 to lay down a foundation that will, in fact, institutionalize a
2 process and procedure that will in fact guarantee equal
3 employment opportunity, and actually manifest the good intentions
4 of what is written on paper, and try to give us as much of the
5 practical benefits as the paper intends the approaches to provide
6 us.

7 So, we appreciate the opportunity on behalf of CAFE. We
8 appreciate coming here before you today. We appreciate the fact
9 that you've listened to us, and that you've been generally very
10 supportive.

11 Again, our statements are not intended to be an
12 indictment of Mr. Best. I've never met him. I know we will meet
13 now, and I hope that we can in fact work together to really make
14 this situation a better one, which is, I think, everybody's
15 intention.

16 Thank you very much.

17 CHAIRMAN ROBERTI: One question of Ms. Delgado.

18 MS. DELGADO: Yes.

19 CHAIRMAN ROBERTI: You asked for an audit of TAUs who
20 were granted applications?

21 MS. DELGADO: Yes, people that --

22 CHAIRMAN ROBERTI: Can you explain that to me again?

23 MS. DELGADO: People that requested to be placed on TAU
24 assignments, which is a viable way to hire, as you know. And we
25 want to know who were they granted to. I mean, how many were
26 made, and who actually received them?

27

28

1 In other words, our perception actually is that it is
2 not going to under-represented groups, but that may be. We don't
3 know. It's a perception at this point.

4 CHAIRMAN ROBERTI: Thank you very much.

5 MS. DELGADO: You're welcome.

6 CHAIRMAN ROBERTI: Does anyone else wish to testify?
7 Please come forward.

8 MR. VEGA: My name is Eric Vega. I'm the State Policy
9 Advocate for the Mexican American Legal Defense and Educational
10 Fund.

11 I wanted to commend Arnold and his partner, my brother
12 and sister advocates. I think they did a real good job of
13 presenting what the problem is and articulating that problem.

14 I'm not going to go into any detail. The package that
15 I've presented before you does have some of the statistical
16 information. I think it would be interesting.

17 On the fifth page is kind of a report card. You'll see
18 a whole bunch of "Fs" there, and that indicates that the
19 Department is not doing so good in terms of employment hiring of
20 Hispanics.

21 I had the opportunity of meeting with Mr. Best yesterday
22 to talk about our concerns. And I found him to be engaging and
23 interested in the problem, and willing to take steps to try to do
24 something about it.

25 I'm here on behalf of MALDEF to ask the Senate to record
26 or recognize a letter from Mr. Best, in which he admits that
27 there's a significant, serious problem, which he's done already
28

1 today, and in which he talks about focusing on the problem of
2 Hispanic hiring and trying to solve the problem within the next
3 six months. Not completely solve the problem, but address
4 concretely, with imaginative ideas on how you implement
5 affirmative action over at the Department of Transportation.

6 So, in joining Arnoldo, I would like to urge this
7 Committee to say to Mr. Best, you do have a problem over there.
8 We're glad you're recognizing it. We suggest that you sit down
9 with MALDEF, with CAFE de California, with all the other
10 organizations, and develop some good, concrete plan to solve this
11 problem.

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you, Mr. Vega.

14 Any questions of Mr. Vega? Thank you very much.

15 Mr. Read.

16 MR. READ: Thank you very much, Mr. Chairman and
17 Members.

18 Aaron Read, representing the Professional Engineers in
19 California Government. We represent approximately 8,000
20 engineers in various State departments. A large number of them
21 are in Caltrans and are, in fact, the backbone of the project
22 delivery and construction supervision effort that the Department
23 puts forth.

24 I'm not here to oppose Mr. Best. In fact, to compliment
25 him on being open and accessible and communicative with our
26 membership, and we appreciate that.

27

28

1 I would like to just point out a couple of problem
2 areas, and I'm not so sure that if he could solve them, he might,
3 but you heard a little bit about affirmative action problems. I
4 would like to suggest that as those relate to professional
5 engineering classes, that in fact one of the problems we have is
6 simply the pay scale is too low. Qualified minority applicants
7 also often find that they can do much better working elsewhere.
8 They're in demand to work in other public jurisdictions as well
9 as the private sector.

10 We find that as an employer, the State, I think, lacks
11 some vision in being able to set those salary levels
12 appropriately so that we can recruit and retain high quality
13 employees and achieve also the ethnic balance that is necessary.

14 We've talked to Mr. Best and his Department about ways
15 to do that. We're certainly constrained because we have a
16 collective bargaining process, and we negotiate with the
17 Governor's Office of Employee Relations. We're a little stymied
18 right now. Of the twenty bargaining units that are out there,
19 all but three have settled their agreements. We're one of those
20 three that has not, and we're hopeful that we can continue to
21 work with Mr. Best in an attempt to rectify that situation. Some
22 of it may be things that he may be able to help us solve.

23 The classification system is another area of concern of
24 ours. It transcends his department a little bit. We have to get
25 agreement from the Department of Personnel Administration. We
26 think we're close on that. We'd like to kind of nudge the
27 Department along in that same direction.

1 We have, for example, right now some 80 professional
2 engineering positions that are vacant and just are hard-core. We
3 can't fill them. It's tough to do the job and get the projects
4 out when you have that kind of recruitment problems.

5 Just last year, the Governor recognized in his budget
6 the need to hire significant numbers of new engineers. If I'm
7 not mistaken, we added something like 1100 new positions, or so.

8 I have with me the President of our organization,
9 Mr. Larry Loudon, who, again, is with Professional Engineers in
10 California Government. I'd like to allow him to just say a few
11 words.

12 MR. LOUDON: Mr. Chairman, Members of the Committee, I'm
13 Larry Loudon, the President of the Professional Engineers in
14 California Government.

15 I'm a Senior Transportation Engineer, working for the
16 Department of Transportation. Mr. Best is my boss.

17 What I say today is in no way to be construed that I do
18 not support him in confirmation. I do.

19 I want to underscore the problem with Hispanic hires of
20 engineers. As a Senior Engineer, I have the opportunity to sit
21 on exam panels, on interview panels, for placing people. I have
22 the obligation and instruction to be aware of the affirmative
23 action goals of the Department and to work towards that.

24 The Hispanics engineers that are hired are, for all
25 intents and purposes, match the others that are hired. In other
26 words, they're spread roughly equally throughout the exam
27 scoring: a certain percentage rate high; a certain percentage
28 rate low; and a bunch rate in the middle.

1 When we do get them on board, and it takes a long time
2 because of the hiring process, by the time we get to hiring, most
3 of them are gone because everybody has affirmative problems. And
4 those who get to them first are able to hire them.

5 When we are able to hire them into the Department, and
6 I'll speak from my personal experience, I got two excellent
7 Hispanic engineers that came to work for me: one off of the
8 student training program. He came in. I was aware of him. I
9 watched him as he worked as a student assistant in other areas,
10 and when he -- as soon as he graduated, I was able to get him
11 hired. Another one came in through the junior civil process
12 through the entry level. Both of them were excellent engineers.

13 Both of them stayed around less than a year; were hired
14 away by other agencies in the Los Angeles area simply because
15 they got paid substantially more by them than by Caltrans.

16 I don't know what can be done about that. I know we
17 have constraints on salaries. But that is one of the problems.
18 They're able to write their own ticket, and we're unable to match
19 it. We're unable to call it.

20 Thank you.

21 CHAIRMAN ROBERTI: Thank you very much.

22 SENATOR MELLO: May I ask, Mr. Read, to follow up on
23 your concern.

24 CHAIRMAN ROBERTI: Senator Mello.

25 SENATOR MELLO: I was not aware of this, but you're
26 saying that the engineers you represent do not have an agreement
27 with the Department?
28

1 MR. READ: Yes, sir; that's correct. We are still, even
2 though they expired last year, we are many months now without a
3 contract.

4 I'm hopeful that maybe we can put it together.

5 SENATOR MELLO: Are negotiations going on at this time?

6 MR. READ: Actually no. My understanding is we had a
7 meeting, and there's no future meetings set, so I don't know when
8 we'll get back on track.

9 I don't know whether the Engineers' organization's in
10 the doghouse or what. We've been complaining about salaries, and
11 we think rightfully so, because we want to attract, you know, the
12 best engineers we can for public works projects. It's difficult,
13 as an employer, for the State to attract, particularly in
14 Southern California.

15 SENATOR MELLO: You stated that there are over 80
16 unfilled positions now in engineering positions?

17 MR. READ: And in the professional -- yes, and Mr. Best
18 may want to comment on that further. He probably knows better
19 than I.

20 SENATOR MELLO: What I'm leading up to is how that
21 relates to contracting out. Are we substituting contracting out
22 for hiring engineers in the Department?

23 If so, based on the figures we have, the contracting out
24 for 1200 personnel years is costing the State \$100 million more
25 than if we were to do that work with our own public employees.

26 My goodness, \$100 million won't take care of the STIP
27 program, but it would sure provide for a little asphalt around
28 some of these holes.

1 Do you state that we are contracting out instead of
2 hiring engineers?

3 MR. READ: Well, I know this Committee knows that our
4 organization is vigorously opposed to contracting out because it
5 does, as you've stated, cost, in our opinion, significantly more
6 in the end, and approximately 100 million could be saved if we
7 used in-house staff. That's been our position since our
8 organization was formed more than 25 years ago, and that hasn't
9 changed.

10 Yes, we would think that if we paid a little better, we
11 could do the job better in-house. We always have. Caltrans has
12 always -- this whole notion of contracting out is a relatively
13 new one.

14 Caltrans was the premier highway-freeway design
15 organization in the world. People came from all over, other
16 countries, just to watch how we did it here in California. I'm
17 sad to say that that's no longer the case.

18 We would like to see that preeminence regained again.

19 SENATOR MELLO: I was under the impression that when we
20 contracted out, we were saving money because we were not hiring
21 permanent employees.

22 I'll ask Mr. Chairman if I can ask Mr. Best to comment
23 while Mr. Read is here and his associate about the statement made
24 that we have unfilled positions, yet we are contracting out
25 alleging that it costs so much more money to do so than to hire
26 regular staff.

27 MR. BEST: Yes, Senator Mello.
28

1 I don't know whether the 80 figure is an up to date
2 figure, but certainly the point that's being made is we cannot
3 fill all of our engineering positions in the urban areas,
4 particularly the Southern California area -- Los Angeles, Orange
5 County area. We are hiring all the time, but we do have
6 turnover, and we do have some vacancies down there.

7 That's part of the overall problem. In other words,
8 when you look at it from the minority hiring aspect, any
9 qualified engineer, we're hiring, period.

10 Actually, of course, contracting out is saving our neck
11 to some degree in the sense that in these areas in particular,
12 where we have vigorous recruiting programs, and in response to
13 some of the points that Larry raised, where we have gone to
14 on-the-spot testing and hiring in some of these areas for
15 engineering personnel because the time delay was defeating us in
16 the normal process, and we still are not able to fill all the
17 positions. So, contracting out is actually keeping our program
18 on schedule while we are trying to recruit and add personnel.

19 The 100 million figure I'm not familiar with. Our total
20 budget for contracting out last year -- or this current year is
21 \$131 million. And certainly, to convert the sum, a little over
22 1,000 PY equivalence that that represents for contracting out to
23 on-board staff, would also require many millions of dollars. I'm
24 not sure what the savings are or the costs are.

25 The contracting out program, I think I can say, is not a
26 cost saving program at this time. It is a program that provides
27 management flexibility. It's a program that allows us to respond
28

1 to local measure projects quickly and generate the staff and to
2 fill holes in our own staff at the time. But it is not one that
3 I think we can look to as a major cost savings program.

4 SENATOR MELLO: On that point, if the cost for each
5 personnel year when you contract out is running as you stated,
6 about 120,000 to 130,000 a year, you said 1200 personnel years
7 for 130-some million dollars, what are we paying these engineers
8 if we hire them?

9 MR. BEST: Senator, let me get those figures for you. I
10 don't have them with me.

11 When you add all the costs of an on-board engineer, of
12 course, it is the salary. It is also the support personnel
13 that's working for them. It's the space and the actual
14 generating. The cost, I would guess, is around \$100,000 per
15 engineer at the State.

16 But that's just eyeballing it off the top of my head
17 from an average salary and adding the costs of the support
18 personnel.

19 When we contract out, it's like hiring a lawyer or
20 something. You pay for the professional services, but what you
21 actually get for that is not only the time of the professional,
22 but all all of the support of that professional organization and
23 back up that goes with it. So, I'd have to generate the figures
24 for you for comparison.

25 SENATOR MELLO: I'd be interested in seeing that,
26 because at least from what we have here, it appears that it's
27 costing us more money to contract out by some \$100 million. If
28 that's the case, my goodness, why not?

1 If we're way behind, as we are in the engineering part,
2 we're also behind in funding for these projects. It seems better
3 to have people on board and have them trained and doing the job
4 the way we want than to be contracting out.

5 What's holding up getting a contract? Apparently this
6 is the only category that does not have a contract?

7 MR. BEST: It's not the only unit that's still out,
8 Senator. I do not know the answer to that question.

9 Of course, the bargaining is done between the unit and
10 the Department of Personnel Administration. They don't bargain
11 directly with the Department.

12 I have heard some of the issues, but I'm not familiar
13 with the current status of it, so I couldn't answer your
14 question.

15 Again, we could get you a report on what it is.

16 SENATOR MELLO: It seems to me somebody ought to be
17 trying to expedite it. If they're looking for a contract, and I
18 guess that's our mode of operating, somebody somewhere, perhaps
19 within this four or five square miles, ought to have the
20 authority to get this happening.

21 MR. BEST: Let me just make it clear on the record that
22 I fully support contracting out as a supplemental activity to
23 generating and maintaining a strong departmental staff to handle
24 the basic program.

25 What we are dealing -- for example, even though we have
26 been gearing up a substantial contracting out program, last year,
27 last budget year, we hired 1725 people in our Department. That's
28

1 not all engineers; that's across the board, including a number of
2 engineering personnel. And we will be expecting to hire over
3 1200 people in the Department this year.

4 So, it is not -- we're not really dealing with a
5 substitute here. And also, of course, we, starting January 1 of
6 this year, the new law went into effect which governs the hiring
7 of that and has a ratio in there that is to be protected and
8 maintained to ensure that the contracting out is not used as a
9 device for substituting for State employees.

10 SENATOR MELLO: These 1200 that you're hiring, those
11 aren't added on to your total employee list. You have vacancies
12 or people leaving, because that's about eight percent of your
13 total 15,000 workforce.

14 MR. BEST: A large number of the 1700 that were hired
15 this year, which is about -- over 10 percent of the total
16 workforce, were new hires, new positions added to the Department.

17 SENATOR MELLO: What is your turnover, though? How many
18 people leave a year?

19 MR. BEST: Again, I don't have the figures. We have
20 several hundred people leaving the Department every year,
21 obviously.

22 I believe that the new positions that were added to the
23 budget for this year, added last year to be hired during the
24 course of this year, were around 1,000 positions.

25 Do you remember the number on that, Aaron?

26 MR. READ: Something like that.

27 SENATOR MELLO: Thank you.
28

1 CHAIRMAN ROBERTI: Senator Petris.

2 SENATOR PETRIS: I'd like to cover a couple other areas.
3 With respect to the affirmative action, I had some questions.

4 I might point out, in the prior witness who pointed out
5 there were a lot of "Fs", one of them is in the San Francisco Bay
6 Area, and that's my district. I don't represent San Francisco,
7 but I'm part of the Bay Area, the East Bay, so I'm concerned.

8 The only thing I want to go into on affirmative action
9 is to ask you, in view of the statements that have been made that
10 are generally in praise of your own attitude and your own plans
11 and your statements, coupling those with the specific
12 recommendations of the report of the Personnel Board requiring
13 that certain things be done and offering some recommendations, it
14 seems to me that the timing would be right for you to meet with
15 the CAFE people, Mr. Torres in particular. You met with others,
16 and maybe you need to meet with them again. The MALDEF witness
17 indicated you met with them.

18 Are you planning to meet with Mr. Torres, for example,
19 to go over some of these things?

20 He, I might point out, has had extensive experience in
21 conferring with several departments. He's been before other
22 committees on which I happen to sit, and he has an enormous
23 amount of knowledge.

24 It doesn't mean you have to buy his whole program, but I
25 think you'll find it would be helpful and productive to meet with
26 him, because he brings this experience in representing so many
27 people across the board in one department after another.
28

1 Is that in your plans, to meet with him?

2 MR. BEST: Yes, Senator Petris.

3 I've not made direct contact with Mr. Torres, as he
4 indicated. And I have to admit it, in sitting here and listening
5 to it, I'm more than a little bit embarrassed because I went to
6 the annual meeting of CAFE last year, shortly after I came on
7 board as Director, and explained to them the affirmative action
8 program that I thought we needed, and generally got complimentary
9 comments after that. And at that time I extended the offer to
10 them to come in and meet with me if they had problems, and tell
11 me about it.

12 And now I hear from them today that they've made several
13 attempts to get through the barriers that protect me and were
14 unsuccessful in doing that. I admit to being very embarrassed
15 about that, because certainly, I offered them to come to me and
16 talk to me, and then apparently managed to put up roadblocks in
17 the way.

18 SENATOR PETRIS: Well, let me tell you, I appreciate
19 your candor. That happens with all of us. Those of us in the
20 Senate don't have the level of responsibility you do. Yours is
21 statewide.

22 But we run into people all the time who have been
23 complaining about trying to get in to see us and being
24 sidetracked by overzealous and protective staff, who are probably
25 following our directions in the first place.

26 MR. BEST: Right.
27
28

(Laughter.)

1
2 MR. BEST: I'll refer you to the letter that Mr. Vega
3 mentioned earlier, and I think he distributed it to you. One of
4 the items that I listed in there that we are in the process of
5 doing right now is to pull together an advisory group of people
6 outside the Department and outside State service. And I would
7 more than welcome Mr. Torres as part of that.

8 SENATOR PETRIS: I would urge you to do it.

9 Let me just read the first two recommendations:

10 "The department should specifically
11 identify where and how the department
12 will make more effective use of
13 selection tools such as: training
14 and development assignments,
15 rotational assignments ..."

16 and so forth; then the next one is:

17 "The department should identify which
18 classes, percentage or number of
19 opportunities to be provided and
20 who is responsible to accomplish
21 them."

22 The Board is very specific. You're familiar with this
23 report, I'm sure.

24 One of the reasons I'm pressing a little bit is because
25 I've been through this as a Legislator over many years with many
26 departments, at both the local and State level. And we get a lot
27 of well-meaning people. And as prior witnesses have indicated,
28

1 they spell out the goals. There are lofty and noble objectives,
2 and there's such a big gap between the well-meaning phrases that
3 are turned and printed and the actual, practical plan on the
4 ground that's supposed to accomplish that purpose and close the
5 gap.

6 That's where I think Mr. Torres and his people would be
7 of significant assistance to you in carrying out your well-known
8 and well-expressed intentions.

9 The most recent go-around I've had is with the Cal State
10 University system. I mean, you read their statements, and it's
11 like the Russian Soviet Constitution. You think it's a land of
12 freedom and opportunity, and Bill of Rights, and everything else.
13 But you walk around on the ground out there, and there are a lot
14 of people that get whisked into prison because they believed the
15 Constitution and carried it out.

16 Now, I don't mean to make that analogy too close. What
17 I'm saying is, there's too big a gap between the articulate
18 expression of a beautiful goal and the achievement of it. When
19 we go out to the campuses, and we check -- what's the percentage
20 of students; what's the percentage of faculty; what's the
21 percentage of employees in other categories below the faculty
22 level -- you find there's an awful gap there. And yet, we get
23 reports coming in saying everything's fine. We know it isn't
24 fine.

25 So, for that reason I would urge you to do that.

26 Now I'd like to go on to a couple other subject areas
27 and not take too much time. Again, one of them is right in my
28 district. It's the big squabble going on over widening 80.

1 Now, I understand the Department's position. There's a
2 tremendous gridlock that's getting worse. We haven't reached
3 gridlock yet, but we're getting there. There's a lot of
4 pressure.

5 I know it takes years for you, meaning the Department,
6 to finally get the funds, which they've requested maybe a decade
7 earlier. When you get them, you want to go out and do the
8 project. In this case, it's widening of 80.

9 The City of Berkeley and others are opposed to it
10 because they feel, for a number of reasons, it's not going to
11 solve the problem.

12 One of the major problems is, if you widen 80, let's
13 say, going south and heading west to San Francisco, you increase
14 the bottleneck because nothing's being done there. And I
15 understand that you have no control over that.

16 I'm wondering what your attitude is on having a better
17 handle on planning by involving more people, regionally, more
18 agencies, so that we have a comprehensive, regional plan, so that
19 we don't compound the problem by widening 80, for example, and
20 jamming up the bridge that much more. You widen 80, you throw
21 more cars up against the toll bridge, and people sit twice as
22 long as they did before because there are more cars there and no
23 expansion.

24 How do you feel about the idea of somehow restructuring
25 things to bring more people in on the planning so that each
26 segments knows what the other segment is doing and is part of a
27 coordinated, overall plan? Can you comment on that, please?
28

1 MR. BEST: Certainly, Senator.

2 It almost sounds like a lead-in to one of my standard
3 speeches. The problem --

4 SENATOR PETRIS: I have good agents out there.

5 (Laughter.)

6 MR. BEST: I'm finding that out.

7 SENATOR PETRIS: I just wanted to get it on the record
8 here.

9 MR. BEST: One of the things that struck me rather
10 dramatically in coming back to Transportation, after 12 years on
11 the periphery of it, was that what I found going on when I came
12 back was that the State's program, essentially, had degenerated
13 into project advocacy. And that the whole STIP process is --
14 promotes attempting to find the project that's got the best
15 chance of getting it on the STIP, and getting it on the STIP as
16 fast as possible, and then fighting and advocating a project.

17 And unfortunately, when you're trying to develop a
18 transportation system, you've got to look beyond the artificial
19 boundaries of individual projects, and look to what kind of a
20 development are you putting in place, and how is it best packaged
21 not only in terms of the length of the roadway, but in terms of
22 the transportation system and alternative ways of achieving the
23 same needs through transportation systems.

24 And so, we definitely need to move toward a better way
25 of developing an approach to analyzing how to make transportation
26 improvements. And the concept that we've been kicking around
27 we're calling a corridor concept, and we've been discussing it
28

1 with a number of the regional planning agencies to get their
2 input and their ideas about it.

3 And underlying that concept would be the creation around
4 transportation corridors of a multi-agency of all the agencies
5 that have a stake in that corridor, working together, coming
6 together as a cooperative body to plan the transportation
7 improvements on a corridor basis. And if it crossed county
8 lines, so be it. If it crossed planning district lines, so be
9 it. You'd add the other county; you'd add the other planning
10 agency, and you would be focusing on what's the best way to move
11 people and goods through this corridor, rather than playing
12 grantsmanship in trying to design individual projects to chase
13 available pots of money.

14 SENATOR PETRIS: I'm glad you mentioned alternatives,
15 and I'm glad you mentioned flexibility.

16 When are you going to start?

17 MR. BEST: Yes. I'm hoping that as we, this year, are
18 looking at the substantial hole in transportation funding, and
19 having to address that issue of how are we going to put together
20 a long-range funding package for transportation, that we can also
21 consider as part of that, are we spending that money in the best
22 way, or is there a better way to spend that money as part of that
23 package?

24 SENATOR PETRIS: Would you support the use of waivers to
25 accomplish the goals?

26 MR. BEST: Waivers of what, Senator?
27
28

1 SENATOR PETRIS: Well, waivers, the overall money
2 problem brings in the federal contribution. The State can
3 indicate in given situations, when they're allocating the money,
4 waivers on certain projects in favor of others.

5 MR. BEST: Yes, well, as I -- if you're talking about
6 passing the money from a State project to a local project, that
7 happens occasionally. Or if you're talking about moving it from
8 one category to another category of federal projects, we
9 certainly favor that. We favor both, as a matter of fact. We
10 have --

11 SENATOR PETRIS: You have the legal authority to do it?

12 MR. BEST: We have limited legal authority at the
13 federal level now, but not enough to really use it as an
14 effective planning tool.

15 SENATOR PETRIS: I'd like to help you if you need more.

16 MR. BEST: Again, you see, it's applied on a
17 project-by-project basis and not on the basis of a long-range
18 improvement. So, it's there, but it needs to be developed.

19 SENATOR PETRIS: Well, I'm encouraged about what you're
20 saying on all four of those points, and I urge you to go after
21 it.

22 The final subject matter has to do with another area
23 I've worked in, and that is work-related hazards.

24 We have reports indicating higher than normal incidence
25 of cancer among Caltrans workers that are out there in the field.
26 It hasn't all been identified as to the source. We know what the
27 hazards or the exposures are: perhaps some asbestos, perhaps
28

1 stuff in the concrete. Let's see, there's one or two others:
2 exposures to asphalts and solvents; Portland Cement may be a
3 source; pesticides; welding fumes; and carbon monoxide. Well, we
4 know the latter over a period of many years.

5 Are you checking that out to investigate why the
6 Caltrans workers have a higher exposure and sickness level than
7 others, and see if some protective measures, preventive measures,
8 can be taken?

9 MR. BEST: Of course, as you realize, we had, I think,
10 two separate studies that were done. Both tended to indicate the
11 results that you just mentioned. One was a Headquarters study
12 focused on workers in Headquarters office building, done by the
13 Department of Health Services. And then another one done by UCD
14 Medical School that focused statewide.

15 And essentially the conclusions of those studies were
16 that there was an abnormal incidence, but they couldn't identify
17 it with anything. They could identify it at the Department,
18 within the Department, but then in trying to identify it to
19 anything within the Department, they were not able to do that.

20 We formed about a year -- a little over a year ago an
21 Industrial Health Advisory Committee for the Department. And the
22 first step of that -- there were representatives from Health
23 Services, Cal-OSHA, and various other agencies on it in addition
24 to ours -- and they went through and reviewed the industrial
25 hygiene surveys that had been done at the Department at one time
26 or another to begin to try to see if we could find some sort of a
27 connection.

1 So, that's the process we're going through right now, is
2 to continue to see if we can't find, if there is a correlation
3 between any part of the Department's business and these
4 incidences.

5 SENATOR PETRIS: There was an investigation authorized
6 in March of '87 with a budget of about 116,000. Is that the one
7 you're talking about?

8 MR. BEST: That's the one we're talking about, yes.

9 SENATOR PETRIS: I wish you well. There are a lot of us
10 up here that want to help you throughout the Legislature. It's
11 one of the key issues.

12 In my area, for example, the public over the last couple
13 of years, in being asked what's the number one problem in the
14 area, has switched from crime and narcotics and bad football, and
15 other things --

16 (Laughter.)

17 SENATOR PETRIS: -- not at the 49er level, I might point
18 out -- to gridlock, to the traffic congestion.

19 So, there's going to be a lot of heat on all of us to do
20 what we can to solve it.

21 Thank you very much.

22 CHAIRMAN ROBERTI: Any other questions? Senator Mello.

23 SENATOR MELLO: I didn't cover a couple of points that I
24 was trying to address. These will be very brief.

25 One is, in reading your comments about the trucks on
26 freeways during the rush hours, it appears that the Governor's
27 speech writer for the State of the State did not consult your
28

1 Department about whether or not it would be feasible to limit the
2 trucks on rush hours and have them haul by night.

3 I guess, based on your statement, the study that you
4 disclosed shows that that would not be the proper thing to do
5 because the trucks, cutting them back during the peak hours,
6 would only be, according to here, the truck traffic is 4 percent
7 of all vehicles during the morning peak hours, and 2½ percent
8 during the evening.

9 MR. BEST: Senator, there is a definite issue about the
10 role of trucks in peak hour congestion.

11 Unfortunately, the newspaper reporter took a couple of
12 points out of the study and didn't look at what the study said in
13 total.

14 It is certainly true that on an average, on an average,
15 your truck traffic during peak hours is relatively small, in the
16 area of 3-4 percent, I believe. But if you look at individual
17 routes, you will find that the truck traffic is much, much higher
18 on certain individual routes, running up close to 20 percent on
19 some routes during peak hours.

20 Also, another very alarming statistic is that incidents
21 involving trucks are a very significant problem in creating
22 congestion. Over half of the congestion that we have is created
23 by incidents, not by just overload in the capacity itself.

24 So, what we are doing, we are having a meeting that we
25 are trying to pull together as soon as we can with
26 representatives of both the trucking industry and the shippers
27 who ship to address the question of where this study has
28

1 indicated there are problems, and are there alternatives there in
2 terms of changing shipping hours or shipping routes, or what have
3 you, to reduce the incidents where it is a problem. It is not a
4 problem on every route every day. It is problem on certain
5 routes, and it varies from day to day as to how severe that
6 problem is.

7 SENATOR MELLO: Well, legally though, because trucks pay
8 fees just like all vehicles, can you really stop any segment of
9 vehicular traffic? Legally, can we do that?

10 MR. BEST: I believe the answer to that is yes, we have
11 the legal authority to do that. There are certain areas, for
12 example 580 through Oakland has a ban on trucks on it. We don't
13 do that very often in recognition that the trucks, obviously, are
14 a vital part of the economy of the State, but I do believe the
15 legal authority is there, Senator Mello.

16 SENATOR MELLO: One thing, I've been working with
17 Mr. Weber on the Gilroy Train now for about 10 years, but I never
18 pass up the opportunity to try to see what the newest Director
19 might have to say.

20 We have been in the budget since 1980 to try to extend
21 the CalTrain from San Francisco down to San Jose, where it
22 currently runs, down on to Gilroy, and ultimately over to
23 Monterey, where it once ran there.

24 We have a study now that's just being done by Santa
25 Clara County. I'm just hoping that we can get your cooperation
26 from your Department to finally get this alternative to a lot of
27 gridlock that's occurring on Highway 101.

1 I don't know if you're that much on top of what the
2 Train is, but it's sure needed. I think it's feasible and
3 workable.

4 MR. BEST: There's certainly a resurgence and interest
5 in the use of rail as a transportation alternative. And I think,
6 as you know, Senator, some of our trains are doing extremely well
7 in terms of attracting ridership.

8 On that particular area, we're certainly going to -- any
9 proposal that sounds like we can make effective use of something
10 other than automobiles on the road, we're going to be looking at.

11 There is an administration position right now which
12 involves turning the operation of that peninsula commute service,
13 as it is presently constituted, over to a local agency sometime
14 in the next couple of years.

15 But nonetheless, what you're talking about now is
16 expanding that to more of an intercity operation, rather than the
17 level that it is right now. So, that would have to be
18 re-evaluated in light of that proposal.

19 SENATOR MELLO: Yes.

20 The final question, going back to the affirmative action
21 conversation that we had here before, it appears that John
22 Geoghegan from the Business and Transportation requested that all
23 departments adopt a goal to hire 25 percent of the new hires as
24 Hispanics. And I guess last year your Department had 11½
25 percent, which is way below the goal.

26 It appears that while the Hispanics make up about 14
27 percent of the State civil service labor force, 17 percent of the
28

1 entire civil labor force in California, only 11.1 percent of your
2 Department.

3 So, I guess in order to get the numbers up, we have to
4 really play catch-up, and the goal has to be up, otherwise if you
5 just keep hiring at 11 percent, we keep falling further behind.

6 MR. BEST: Senator, with the turnover that -- counting
7 the turnover that we have in the Department and the increase in
8 our parity figures that would result from increasing the size of
9 the staff, essentially in order to plug the currently existing
10 deficiency, we would have to have a 100 percent Hispanic hiring
11 rate next year. That's the size of the problem in this
12 Department.

13 So, I think, as you've heard here today, there's no
14 question that the Department has a deficiency in its Hispanic
15 labor force. It's going to take some very dramatic actions on
16 the part of the Department to begin to close that.

17 Let me say, the Department's had an excellent
18 affirmative action program which has included a Hispanic program,
19 and every year we've increased it. I believe two or three years
20 ago the Hispanics represented, if I remember the number, about
21 10.5 percent of the work force in Caltrans. It's now up over 11
22 percent of the total work force in Caltrans.

23 And the trends are all in the right direction, but
24 they're moving slowly. And when you're facing the size of
25 under-representation that this Department has had historically,
26 those slow trends are -- mean we're just going to have to try
27 something a little more dramatic than the traditional programs.

1 SENATOR MELLO: Are you planning on giving the Chairman
2 a letter of your plan, as requested by Mr. Torres, about how you
3 plan to meet the goals?

4 MR. BEST: There is a letter in the file that suggests
5 some of the things we're doing. We have an action plan, which I
6 would like to have representatives from outside the Department
7 look at and see if they have other recommendations.

8 I guess it's the Committee's pleasure. I have a little
9 bit of a concern with regard to making it appear that all of this
10 is being done because of confirmation, because of the credibility
11 issue that -- we do have a definite credibility issue. How do
12 you get the word out to some thousands of hiring individuals
13 throughout the Department that we mean business, that it's going
14 to be institutionalized as part of the Department's mode of
15 operation, if we create an image that all of this is being
16 generated because of a confirmation issue? That sends the wrong
17 message to the troops in the field.

18 SENATOR MELLO: I would say it isn't, because even Mr.
19 Torres and others here are not opposing your confirmation.

20 This is really the forum in which all of us have a
21 chance to ask you some of these pointed questions, which I think
22 are very appropriate.

23 If you say we have to hire 100 percent, and the goal by
24 the Agency head is 25 percent, we're only doing 11 percent.
25 Somehow, to use the word dramatic, it's going to have to really
26 be a plan that really will get the numbers up; otherwise, I think
27 you're going to be facing challenges and lawsuits, like other
28 agencies are facing.

1 MR. BEST: Yes, that's true.

2 SENATOR MELLO: That's not the best way to do it, but
3 you know, Blacks, Hispanics, Portuguese as well, and others, have
4 not been hired in proportion to the number of people that they
5 have here. There's always something that keeps them from getting
6 a job.

7 CHAIRMAN ROBERTI: If I might interject on that. I've
8 tried to give some thought to some of the suggestions that have
9 been made.

10 First, I think this hearing has been very important, and
11 it's been enlightening for us as well as, I'm sure, for the
12 general public as well.

13 I am a little hesitant about asking for a report from
14 Mr. Best in connection with the confirmation, mainly because
15 after having heard you, the witnesses, both those expressing
16 concerns and those in support, I really feel that you are very
17 much on top of an issue which is, tragically, way behind as far
18 as any intelligent timetable.

19 So, that being the case, I, too, would be reluctant to
20 tie it into the confirmation.

21 If for some reason Mr. Best backslid, and I don't think
22 he's going to, we're not without some jurisdiction in the area of
23 the Department, certainly when the budget comes up. I'm just
24 saying that to say that the Legislature is not without leverage.

25 I'd be reluctant to tie it into the confirmation because
26 it would look like -- it would actually jeopardize your future
27 efforts, and also make people think, well, now the confirmation's
28

1 over with, you know, back to business as usual. I don't think
2 that's your intent, and it certainly wouldn't be the message that
3 we want to send.

4 So, I'm actually feeling good about your knowledge and
5 will in this situation, and very bad about how bad the situation
6 is. I never, myself, realized that it had backslid to this
7 extent. I certainly hope none of the other departments have this
8 kind of chore to do.

9 Mr. Torres is nodding yes, so I hope when the next
10 confirmation comes up, you come once again before us, because
11 this is, frankly, the only way the Committee Members get
12 educated. We get swamped with all kinds of information on a day-
13 to-day basis, but this graphically puts it in front of us, and we
14 can zero in on one department.

15 But hearing what I've been hearing, I think Mr. Best, as
16 much as anybody we've ever heard before, is on top of this
17 situation.

18 Any other witnesses? Do I hear a motion?

19 SENATOR CRAVEN: So move.

20 CHAIRMAN ROBERTI: Senator Craven moves that the
21 confirmation of Robert K. Best be sent to the Floor with a
22 recommendation to confirm as Director of the Department of
23 Transportation.

24 Secretary will call the roll.

25 SECRETARY WEBB: Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Senator Mello.
28

1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote is five to nothing; confirmation is granted.

9 MR. BEST: Thank you.

10 CHAIRMAN ROBERTI: The Senate will take a five-minute
11 break.

12 (Thereupon a brief recess was taken.)

13 CHAIRMAN ROBERTI: The next is the confirmation of
14 Audrey Melikian, Member of the Board of Medical Quality
15 Assurance, Division of Licensing.

16 Ms. Melikian, will you please come forward.

17 Senator Vuich indicated that she would like to introduce
18 Ms. Melikian. So Senator, we'll start with you.

19 SENATOR VUICH: Thank you.

20 I'm not going to keep you here long. I just want to
21 tell you, she's a great gal. She's qualified, and I've known
22 here for about 30 years.

23 CHAIRMAN ROBERTI: I just have about an hour of
24 questions, Senator.

25 SENATOR VUICH: Is that all?

26 MS. MELIKIAN: I'll answer them.
27
28

1 SENATOR VUICH: But she's well-qualified, and she's
2 here.

3 SENATOR MELLO: Is she Slavonian?

4 SENATOR VUICH: No, she's Armenian.

5 MS. MELIKIAN: No, I'm Armenian.

6 And you talked of the trucking industry, and I thought,
7 my goodness --

8 SENATOR VUICH: She works for Commercial Transfer.

9 MS. MELIKIAN: That's been mine for 35 years.

10 SENATOR MELLO: She's not from Long Beach?

11 SENATOR VUICH: No, she's from Fresno, in the heart of
12 Vuich Country.

13 MS. MELIKIAN: My name is Audrey Melikian. Can I give
14 you a little background?

15 CHAIRMAN ROBERTI: Please, tell us why you're qualified
16 and give us a little background a well.

17 SENATOR VUICH: Anyway, she's great. You guys got to
18 vote for her.

19 MS. MELIKIAN: She's partial.

20 SENATOR VUICH: Yes, I am.

21 MS. MELIKIAN: I'm born and raised in Fresno, and a
22 native, and have been involved in lots of the community
23 activities in the community per se, and have been in
24 transportation for a good many years. And after my husband's
25 death, I ran a company with 15 trucks -- 5 diesels, 5 gas --
26 until my children were old enough and were able to go.

1 Then I sold to Commercial Transit, whom I work for,
2 which is also one of her friends, and one of the largest
3 independent companies in the Central Valley. In fact, 50 trucks.

4 But I like to be on the Medical Board. When I was
5 asked, I thought, well, I needed something like that, because I
6 do other volunteer work, whether it's in the hospitals or
7 whatever. And I felt that a lot of the people out in the
8 community aren't that aware of what they can do when they're
9 unhappy about something. And as a woman and a public member, a
10 layman, I was interested in knowing how things were going.

11 I do get letters from different people, and I refer them
12 to the Medical Board. And I'm on the Licensing Division, as you
13 know. There are three divisions, and I'm in the Licensing
14 Division.

15 CHAIRMAN ROBERTI: Thank you, Ms. Melikian.

16 Are there any questions?

17 How long have you been on the Board?

18 MS. MELIKIAN: I came on the Board in March. I was
19 appointed in March of '85, and I was reappointed in April the
20 27th, and then I received a letter of reappointment -- I wasn't
21 confirmed.

22 CHAIRMAN ROBERTI: Right, we changed our procedure, and
23 I think we're having the BMQA people come forward now.

24 MS. MELIKIAN: Is that why --

25 CHAIRMAN ROBERTI: Yes, that's what we did.

26 MS. MELIKIAN: I see.
27
28

1 CHAIRMAN ROBERTI: Are there any questions of Ms.
2 Melikian? Is there any --

3 SENATOR CRAVEN: Move Ms. Melikian.

4 CHAIRMAN ROBERTI: Senator Craven moves Audrey
5 Melikian's confirmation to the Floor.

6 Is there any testimony in favor?

7 Senator Petris, you wanted to ask a question.

8 SENATOR PETRIS: Well, I haven't had a chance to read
9 the material, unfortunately, but attached to some of our
10 documents here is a copy of hearings that Senator Montoya
11 conducted. Perhaps Senator Craven can help us. It goes back to
12 December of '86. Then there's various statements which are
13 rather blistering in their attacks on the Division of Licensing
14 and things that have been happening.

15 I know a lot has happened since then. Are you aware of
16 a lot of criticism of the Licensing procedure?

17 MS. MELIKIAN: That has been some time back? The
18 Licensing Division? What was the name?

19 SENATOR PETRIS: I'll just read the heading of one of
20 the statements.

21 MS. MELIKIAN: Okay.

22 SENATOR PETRIS: "The Division is either deceitful or
23 grossly mismanaged." Then it attacks actions by the Division of
24 Licensing and its staff with regard to -- the issue at that time
25 was the processing of applications by people from abroad or
26 foreigners, and foreign doctors. There was a lot of hassle at
27 the time. I remember Senator Montoya conducted extensive
28

1 hearings on it as Chairman of the Business and Professions
2 Committee.

3 SENATOR VUICH: How long ago was that?

4 MS. MELIKIAN: Maybe my Executive Director, Ken
5 Wagstaff, is here. Maybe he can answer. He had more knowledge
6 of something that's happened a number of years back, because
7 we've licensed -- you know, there's 71 [sic] active doctors now,
8 and we license about -- approximately 4,000 people, physicians,
9 for the State of California. That's a year.

10 SENATOR PETRIS: Well, I guess it's a leftover from the
11 period where we were bombarded with complaints that alleged that
12 the Board was not treating foreign applicants fairly under our
13 own process.

14 MS. MELIKIAN: We do the best we can with what we have
15 to work with.

16 SENATOR PETRIS: As a member, are you getting complaints
17 now from foreign applicants?

18 MS. MELIKIAN: Well, I'm on the Application Committee --
19 I'm sorry, on the other committee. There is another committee
20 also in the Division of Licensing. At that time -- I'm Special
21 Programs. I mean, I don't really do the credential part of it.

22 SENATOR PETRIS: What about in the meetings you've been
23 attending?

24 MS. MELIKIAN: Oh, yes.

25 SENATOR PETRIS: Has there been a lot of discussion
26 recently about those kind of complaints?

27 MS. MELIKIAN: Not that I'm aware of.
28

1 SENATOR PETRIS: Maybe it's settled down.

2 Ken is here. Has that settled down? Is that still a
3 burning issue over there?

4 MR. WAGSTAFF: It's really not.

5 SENATOR PETRIS: That's what I wanted to know.

6 MR. WAGSTAFF: The main reason for that is that we
7 worked out a bill with Senator Montoya's committee where we're
8 able to give people credit for their postgraduate work in this
9 country. And that has helped a lot. That really has helped a
10 lot. We didn't have the authority to do that before, and a lot
11 of people got help up, and they weren't getting credit for things
12 they did once they got to the United States. Now they are.

13 SENATOR PETRIS: Thank you.

14 MR. WAGSTAFF: Also, we've made a management change and
15 have a new Division of Licensing Manager.

16 MS. MELIKIAN: Yes, we do. That's three of them, I
17 think, in one year.

18 SENATOR PETRIS: Thank you.

19 CHAIRMAN ROBERTI: Any other questions of Ms. Melikian?
20 Any opposition?

21 Senator Craven has moved. Secretary will call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.
28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is five to nothing; confirmation is recommended
6 to the Floor.

7 MS. MELIKIAN: Thank you very much. Very nice meeting
8 you all.

9 CHAIRMAN ROBERTI: Same here.

10 MS. MELIKIAN: We read about the Senators but never
11 really get to meet them.

12 CHAIRMAN ROBERTI: Good to meet you.

13 (Thereupon this portion of the Senate
14 Rules Committee hearing was terminated
15 at approximately 3:55 P.M.)

16 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

3rd day of February, 1989.


EVELYN MIZAK
Shorthand Reporter

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17 9:50 A.M.
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24 Reported by:
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27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR KEN MADDY

KARNEY HODGE, Executive Director
California Housing Finance Agency

KAREN M. BERK, Deputy Director
Employment Development Department

J. RICHARD GLADE, Member
Unemployment Insurance Appeals Board

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Senator Maddy is here to introduce Karney Hodge. Senator Maddy, why don't you come forward with Mr. Hodge, and we'll take him to accommodate you.

Executive Director of California Housing Finance Agency.

SENATOR MADDY: Mr. Chairman and Members, it's my pleasure to introduce Karney Hodge, who's appeared before you before. This is for a reappointment as Director of the California Housing Finance Agency.

Mr. Hodge and I go back to my first year in college when I worked for him in Fresno, and we've been close friends and associates ever since.

More importantly to this group, Rules Committee, and to those who will vote for confirmation, is the type of job that he has done as the Director of the State Housing Finance Agency. Under his direction, the Agency was one of the first housing finance agencies in the nation to receive the Standard & Poor's top-tier designation. This recognizes that the California Housing Finance Agency has developed into a financially sound, professionally managed, experienced organization.

There have been numerous other awards, but I think significantly for Karney Hodge, he began to participate on a national level, representing California Housing Finance Agency, gaining the knowledge that comes from being part of a group that represented all the directors of all the housing finance agencies in the country. And this year -- or last year, in October, was

1 elected the President of the Executive Directors of the Housing
2 and Finance Agencies across the nation. He is now holding that
3 job and leading the nation, if you will, in this field, and I
4 think has done an outstanding job for California and represented
5 this State very well.

6 I could say a lot more, but I think that his record
7 during his tenure as Director of the State Housing Finance Agency
8 has been outstanding, and he has represented our State well on
9 the national level as well as the State of California.

10 I would urge you to vote to confirm him.

11 CHAIRMAN ROBERTI: Thank you very much, Senator.

12 Mr. Hodge, we'll ask you what we ask all the Governor's
13 Appointees, and that is why you feel you're qualified to assume
14 this position?

15 MR. HODGE: First, I'd like to certainly thank Senator
16 Maddy for the kind introduction.

17 Rather than to elaborate --

18 CHAIRMAN ROBERTI: Senator Petris has a question.

19 SENATOR PETRIS: Before you get into that, we have a
20 pretty good knowledge of your track record here, and we're going
21 to ask some questions, but my first question is: what about the
22 fellow next to you? Can you tell us something about him?

23 (Laughter.)

24 MR. HODGE: Senator Petris, we go back a long, long
25 time. I'm afraid it might influence your thinking with regard to
26 your vote.

27 SENATOR PETRIS: Okay, I'll withdraw the question.
28

1 SENATOR MADDY: You notice, Senator Petris, I merely
2 said I went to work for him my first year in college, a time when
3 he was single and I was single. And I left everything out in
4 between.

5 (Laughter.)

6 SENATOR MADDY: So, he came to Sacramento. I'd already
7 been here for eight or nine years.

8 MR. HODGE: That's goes back a year or two, and it's
9 really quite hard to believe it's all passed that fast.

10 SENATOR MADDY: 1952.

11 MR. HODGE: Yes, yes. He's a very special person in my
12 mind and a very, very close friend. I really appreciate his
13 support and his friendship.

14 CHAIRMAN ROBERTI: Very good.

15 You have concurrence here, even if he is Republican.

16 One point I'm concerned about, I'm interested in the
17 Home Purchase Assistance Program. I was wondering if you, in
18 your capacity, have any special plans about implementing that
19 specific program?

20 MR. HODGE: Relating to --

21 CHAIRMAN ROBERTI: Proposition 84.

22 MR. HODGE: Yes, indeed. In fact, internally we have
23 been doing that for the last couple of years with some of our own
24 reserve funds in helping first time homebuyers, by helping with
25 down payments, by helping with closing costs, up to \$5,000 per
26 unit or per buyer, directed primarily to the rural and urban
27 areas. Now we've also expanded that.

1 What we will do with what you're specifically asking is
2 proposing at this time to perhaps have a public hearing or two
3 with interested parties that may offer some ideas that maybe
4 we're not implementing, because certainly divine wisdom doesn't
5 rest with us. Maybe we can amplify what we're doing or come up
6 with some new programs.

7 Additionally, I think that perhaps as important is the
8 other that went to HCD, the 200-some odd million for rental
9 housing. We early on made contact with the Department and said,
10 rather than using that fully to fund projects per se, that we as
11 an agency could leverage that money by having them just put up,
12 for example, rather than spending \$5 million on a 100-unit
13 project, as an example, you put up the \$1 million for that
14 project and we'll go to market for the additional 4 so that you
15 won't use up the 5 on any given project, and accordingly, could
16 do just about 5 times as much business as they would normally do
17 if they were to use it just for projects themselves.

18 So, we're working on both fronts, to answer your
19 question.

20 CHAIRMAN ROBERTI: Very good, thank you.

21 Any other questions? Senator Petris.

22 SENATOR PETRIS: As you know, we've worked together on a
23 number of things.

24 MR. HODGE: Indeed.

25 SENATOR PETRIS: I'm concerned about housing for the
26 lower income level of people in our state, who've been hit with a
27 double whammy: one is the almost total elimination of Section 8
28 funding --

1 MR. HODGE: Correct.

2 SENATOR PETRIS: -- and second, the expiration of so
3 many units under the old federal programs going back 30 years.

4 MR. HODGE: Correct.

5 SENATOR PETRIS: It's estimated, I guess by your
6 Department, or somebody, that there would be 117,000 such units
7 getting freed up to go out in the normal market in the next few
8 years. So, I'm concerned about that.

9 I've had legislation which requires your Agency to take
10 inventory and help us get that information out to the
11 municipalities that are involved in low income programs of their
12 own and private and nonprofit groups as well.

13 MR. HODGE: May I respond to that, Senator?

14 SENATOR PETRIS: Yes.

15 MR. HODGE: We're working with the Department of Housing
16 and Urban Development, San Francisco Regional Office, and asking
17 them to let us know immediately when one of these projects for
18 expiration are coming to fore so that perhaps we could move in
19 and offer some kind of financial assistance whereby that owner
20 can extract some of the money that's in that project that he'd
21 like to have, and yet keep it in a lower cost housing rather than
22 having it lost to the inventory.

23 SENATOR PETRIS: That's fine.

24 MR. HODGE: In each case, we'll take a different
25 approach.

26 SENATOR PETRIS: Depends on the individual, because
27 there's different programs and different situations.
28

1 MR. HODGE: Or different localities and different
2 values.

3 SENATOR PETRIS: That relates also to the State law
4 regarding the 30 percent of each project being set aside for
5 certain income levels.

6 Have you been able to meet that?

7 MR. HODGE: Yes, on our 80/20 projects, 20 percent of
8 that goes into -- if a builder comes in and wants to build on tax
9 exempt money, that's a requirement, period.

10 SENATOR PETRIS: Is there activity there?

11 MR. HODGE: Less so since tax reform, because they took
12 away the depreciation so they don't have the value that they once
13 did.

14 What's happening now, of course, is the Mitchell-
15 Danforth task force is dealing with the tax credits to see if in
16 fact they can improve that to entice accelerated activity in the
17 kind of building that you're talking about. That should come to
18 the fore sometime this year.

19 SENATOR PETRIS: I'm not familiar with that one.

20 MR. HODGE: I'm not fully either, except that I could
21 tell you that I am aware of the fact that there is a task force,
22 Senators Mitchell and Danforth, and that task force was charged
23 with giving them a report on how they could improve the tax
24 credit aspect of multifamily building whereby it may attract more
25 builders into that field than currently is the case.

26 What the legislation will be, or how it will evolve from
27 that report I can't tell you. But I do know that it's in the
28

1 works. They are looking at it seriously because they clearly did
2 see the decline in building activity from the '86 tax reform.

3 SENATOR PETRIS: I guess we're finding out that there
4 weren't all that many good cookies in that reform.

5 MR. HODGE: That's right.

6 SENATOR PETRIS: We're finding out more and more that
7 there's a lot of negatives there.

8 MR. HODGE: That's right.

9 SENATOR PETRIS: Now, the low income housing tax credit,
10 what's the current use and application of that? Is that at a
11 standstill --

12 MR. HODGE: I think it's --

13 SENATOR PETRIS: -- because of these other factors?

14 MR. HODGE: It has increased, the activity has
15 increased, but clearly not what it could be.

16 That's really the purpose of the Mitchell-Danforth bill,
17 to see what they can do to enhance that part of it to increase
18 activity.

19 SENATOR PETRIS: I understand the State's credit in that
20 is just about used up. Senator Greene has a bill to extend it.

21 Are you taking a position on that bill? Do you support
22 that idea?

23 MR. HODGE: Oh, sure.

24 The problem with it being used up is that I believe
25 they've got to take that all in one year as opposed to the
26 federal tax credits, which work out over a period of time. And
27 they are used up; you're right.
28

1 SENATOR PETRIS: Have you any clues yet on which
2 direction the new Secretary at the national level is going to
3 take on the low income? He's made a lot of pronouncements, and
4 it's probably early to read a blueprint.

5 MR. HODGE: No.

6 SENATOR PETRIS: Have you had any preliminary
7 indications from the federal people on attacking some of these
8 problems that we have in this State --

9 MR. HODGE: No.

10 SENATOR PETRIS: -- for the lower income housing?

11 MR. HODGE: No, and we have inquired, and the response
12 was, early on, that he was, one, at that point concerned about
13 his confirmation -- not concerned about his confirmation, but
14 that was of immediate interest. And then secondly, he was going
15 to fill the positions.

16 In fact, I just talked to his secretary today, as a
17 matter of fact. And she said that perhaps in the next six to
18 eight weeks that he would be in a position to really express, in
19 one way or another, the direction in which the Department will
20 take.

21 SENATOR MADDY: I might interject, Senator Petris, that
22 on January 5th, because of my association with Jack Kemp, I have
23 taken a large sheaf -- a little larger than this -- of Karney's
24 background and asked that Jack give him an opportunity to sit
25 down --

26 SENATOR PETRIS: Good.

27

28

1 SENATOR MADDY: -- and run down our experiences.

2 Because I think in California, we've done just about everything
3 that has been done around the nation, in one form or another.

4 SENATOR PETRIS: Yes.

5 SENATOR MADDY: And I've had a positive response back
6 from Secretary Kemp that he would be happy to do that. The
7 question is whether we can get Karney back there and a chance for
8 him to get his team together. I understand he's going through
9 the process of putting a group on board.

10 I've indicated clearly that Mr. Hodge is not going to go
11 back to Washington, nor does he desire to, but that Secretary
12 Kemp could benefit from his level of experience.

13 SENATOR PETRIS: Yes, sure. That's fine.

14 MR. HODGE: I think with our national association, with
15 which I'm involved, also kind of strengthens our position in
16 regard to having some input. And we sent a ton of material back
17 to him as to the things we think would be helpful to what we're
18 doing.

19 SENATOR PETRIS: Okay, thank you.

20 CHAIRMAN ROBERTI: Senator Mello.

21 SENATOR MELLO: If I may follow-up on one of Senator
22 Petriss' questions, and that is these units now that are coming
23 off of contract. My understanding is there's some 21,000 rental
24 units that are now being subsidized under Section 8 that, over a
25 five-year period, the original term is expiring. Congress has
26 not yet seen fit to extend the term.

27

28

1 You responded to Senator Petris and said that once you
2 know they'll come up, you'll try to find some money; try to help
3 continue them on.

4 The magnitude of this problem, to take 20,000 units and
5 the subsidy rate; I mean, the tenants pay 25-30 percent of their
6 income, which in some cases is about \$100 a month if they're on
7 Social Security. There's a subsidy rate going on of about
8 \$300-400 a month. If you multiply that out by 21,000, it's just
9 a tremendous amount of money.

10 I guess my question is, where are we going to find this
11 kind of money? Or are you proposing some legislation, or some
12 other way of financing?

13 These people are going to be facing a market rate rental
14 on these units, and there's just no places. There's a waiting
15 list of 3-5-10 years under many housing authorities right now to
16 try to get into some subsidized housing.

17 MR. HODGE: I think it'll probably take multiple sources
18 of finance to make that particular aspect of rental housing take
19 place.

20 What we're doing currently is -- let me just say this.
21 In our units, and we have some 20-25,000 rental units; those are
22 regulatory agreements to go into, I believe, 2008. So as an
23 Agency per se, we don't have any of those that are going to
24 expire. Ours are regulatory agreements with each one, and they
25 go, as I say, it's pretty much into about 2005-2010.

26 What we did is, we went to the Department of HUD,
27 because I worked on the national Task Force on Preservation, and
28

1 sat through a series of meetings with that task force. There is,
2 I believe, Senator Mello, a moratorium at this point for a year
3 or two. I'm not sure of that, but I believe that there is, to
4 take a look and give us a chance to sit back and take a look at
5 the picture.

6 But what we're proposing with the Department of HUD on
7 those units that they have funded is that we could come in with
8 some secondary financing, perhaps. As a matter of fact, we did
9 just recently, on one we saved 300 units in Ridgecrest. That
10 just happened last month in just exactly this way, working
11 something out with the Department, where they may add a few
12 Section 8 certificates; we could come in with some secondary
13 financing.

14 I will say, what really helped on this was the
15 Legislature's position on the set-aside, the housing set-aside.
16 Now, here is a typical example, I think, that you'll force this
17 even more forcibly with legislation last year saying that from
18 tax increment funds in these communities, that they need to use
19 -- set aside 15 percent of that for housing. Here was an
20 opportunity for the City of Ridgecrest to save these 300 units.

21 And what really took place was rather complicated and it
22 took a long period of time, but very briefly what happened was,
23 we were the in-between between the Department of HUD and the City
24 of Ridgecrest. We bought from HUD and sold simultaneously to
25 Ridgecrest. They used the bonds to acquire the property. Those
26 300 units are and now being saved and will continue to be for low
27 income tenants.

1 So, that's the kinds of things that we're doing --

2 SENATOR MELLO: I just hope --

3 MR. HODGE: -- with regard to projects.

4 SENATOR MELLO: I have calls from people who read news
5 articles that their unit is coming out from under the contract in
6 a certain time. They're really frustrated. They don't know what
7 they're going to do.

8 MR. HODGE: Yes.

9 SENATOR MELLO: My second question has to do with, we've
10 sort of grouped together low and moderate income housing as a
11 phrase, and in reality, moderate income units, the numbers cost
12 out a lot easier than low income.

13 I don't think we're getting an even split on units that
14 come on line from development, primarily, that are available for
15 low income.

16 MR. HODGE: You're talking rentals or single family
17 purchases?

18 SENATOR MELLO: Purchase.

19 MR. HODGE: Yes, I think that's probably accurate. I
20 think your statement's accurate.

21 I will say this -- and I don't know that it's a
22 satisfactory answer to you -- but I would say that the average
23 sale price in the State of California is somewhere in the
24 neighborhood of \$125-130,000. The average sales price of the
25 houses we're funding is somewhere between \$75-85,000.

26 How low you can get, we can get as low and they build.
27 The problem is that they can only get so low when it comes to
28

1 building, land costs probably being one of the major reasons why
2 they can't get down to really hit the low income person, as
3 you're describing.

4 SENATOR MELLO: Yes.

5 I think my experience is, well, the land costs are high.
6 Where do you find a unit for 75,000 when the median, like in
7 Santa Clara County, is up to \$200,000 right now? In many areas
8 around the state it's running 150-200,000.

9 I think in order to make it fair and to help direct some
10 housing to the low income category, we have to come up with in
11 the Legislature a way to split the low and moderate, so they have
12 to be a percentage of each guaranteed.

13 But I just don't know how, because it's very difficult
14 to come up with the numbers on a low income housing unit that's
15 affordable. The amount they can pay to purchase the home is so
16 low compared to what the actual cost of the home is, it would
17 appear to me that we have to have another type of funding source
18 to narrow that gap so we can guarantee a certain amount going
19 into low and a certain amount going into the moderate.

20 MR. HODGE: What we've done in that regard, and
21 certainly it doesn't answer the problem as a whole, but
22 internally, we've set aside monies whereby we could help lower
23 income buyers with closing costs, with down payments, so that
24 they could indeed qualify for a home that normally they wouldn't
25 be able to, and not ask for any return on that until they've sold
26 the house somewhere down the line, so they don't have any heavy
27 burden during the period that they have it. And the payback
28 takes place at the end of the line where they've sold it.

1 It's a means that we've addressed in a way to answer the
2 -- clearly the question that you pose.

3 SENATOR MELLO: Are most of these resales prohibited
4 from going into the open market, or in many cases do they have to
5 be resold to another eligible low or moderate income person?

6 MR. HODGE: Yes, yes, they do.

7 SENATOR MELLO: Otherwise, they come out of the
8 inventory.

9 MR. HODGE: Yes.

10 SENATOR MELLO: Good. Thanks for answering those
11 questions.

12 MR. HODGE: It's a pleasure.

13 SENATOR MELLO: I think you've been very sensitive in
14 trying to meet the need here, but it's very complicated.

15 MR. HODGE: It is.

16 SENATOR MELLO: When you look at the homeless problem
17 around the whole country, the people are so frustrated in our
18 communities, trying to find affordable housing, it's just getting
19 worse and worse. We're just not meeting the need, and I don't
20 think the State can do it by itself. I think it's a national
21 responsibility.

22 MR. HODGE: It is.

23 SENATOR MELLO: Working in partnership with the State
24 and local governments to help to do it.

25 MR. HODGE: I think the Cranston-D'Amato bill -- which
26 should somewhere along the line come to fore at the end of this
27 year, perhaps if not, next -- will clearly be addressing
28 specifically the issue that you address.

1 SENATOR MELLO: Thank you.

2 CHAIRMAN ROBERTI: Thank you, Senator.

3 Is there any opposition in the audience? Seeing none,
4 Senator Petris moves confirmation --

5 SENATOR PETRIS: So move.

6 CHAIRMAN ROBERTI: -- of Karney Hodge as Executive
7 Director of the California Housing Finance Agency.

8 Secretary will call the roll.

9 SECRETARY WEBB: Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Senator Mello.

12 SENATOR MELLO: Aye.

13 SECRETARY WEBB: Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Senator Craven. Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 The vote is four to nothing; confirmation is recommended
18 to the Floor.

19 Congratulations.

20 MR. HODGE: Thank you very much.

21 CHAIRMAN ROBERTI: Thank you.

22 I have guests in my office. Senator Petris, I'm going
23 to turn the gavel over to you. Maybe we can take up the other
24 Governor's Appointees, Ms. Berk and Mr. Glade.

25 SENATOR PETRIS: Karen Berk, would you come forward,
26 please.

27

28

1 Would you tell us why you feel you're qualified to hold
2 this appointment? That's our standard opening.

3 MS. BERK: Thank you, Senator Petris. Thank you,
4 Senators.

5 I appreciate this opportunity to appear before you to
6 discuss my qualifications for the position of Deputy Director of
7 Marketing Services for the Employment Development Department.

8 During my 21 years of service with the Employment
9 Development Department, I have had the opportunity to work at
10 both the State and local levels, and I'm aware of the need to
11 actively market EDD services to those who are looking for work,
12 as well as employers with job openings. EDD has services which
13 can help most Californians, but often people are unaware of how
14 to access these valuable services.

15 One of the major strengths I bring to this position is
16 my familiarity with all the Department's programs and services.
17 This comes not only from working in the various programs, but
18 also from heading up EDD's Evaluation Division for many years.

19 My experience also brings a thorough knowledge of the
20 Job Training Partnership Act and the need to market those
21 training services to the disadvantaged as well as encourage the
22 business community to support the programs by providing training
23 and employment opportunities for JTPA participants. During my 3½
24 years as Vice President of the Private Industry Council in Los
25 Angeles, I was actively involved in marketing the program and
26 learned first-hand what it needed at the local level.

27
28

1 Many Legislators have expressed their interest in
2 ensuring that EDD gets the word out on what services are
3 available for the public. One of my primary goals is the
4 development of a comprehensive statewide marketing plan, working
5 with local area managers to plan and implement local plans. This
6 will include coordination with JTPA and other employment and
7 training services.

8 The purpose of the plan will be: to help those who need
9 work to access the largest no-fee employment services in the
10 state; to encourage the business community to use these services
11 they've already paid for in federal tax dollars; and to provide
12 job opportunities for EDD clients; certainly to put Californians
13 back to work as quickly as possible and to help California
14 businesses remain competitive by assisting in recruiting a
15 qualified workforce.

16 I believe the experience I have, along with my strong
17 leadership and communication skills, will enable me to accomplish
18 this.

19 Thank you very much for your time and consideration.

20 SENATOR PETRIS: Any questions? Senator Mello.

21 SENATOR MELLO: I don't want to pass up the opportunity
22 to try and find out a little bit about, first, the Governor's
23 program for jobs for inmates in our prisons.

24 MS. BERK: I'm sorry. I'm not familiar with that. It's
25 not an EDD program that I'm familiar with. I think it is
26 Corrections.

27

28

1 SENATOR MELLO: It's in the Department of Corrections,
2 but I would think somehow that they would be in contact with your
3 Department.

4 I'm not in support of the program, but I would think, if
5 it is to be well thought out, that there'd be some training
6 behind it and some screening of the inmates to make sure they can
7 do it, if it does get approved and so forth.

8 The second point I had, and Mr. Kiddoo is involved in
9 this, was the independent contractor status -- and it happened
10 down in Monterey, where we had a hearing and the Department ruled
11 that newspaper carriers were in fact employees of the newspaper,
12 and which put a tremendous burden on the Monterey Herald at this
13 point.

14 I think the whole issue of independent contractor versus
15 regular employees, who are subject to all of the fringe benefits
16 and unemployment, whether or not they're under the control of the
17 supervisor or not.

18 Are you involved in that at all?

19 MS. BERK: No, Senator Mello. That's handled through
20 our Tax Branch. I'm not involved in those activities.

21 We're a very large Department.

22 SENATOR MELLO: Wait until I find something that you are
23 involved in.

24 (Laughter.)

25 SENATOR MELLO: Thank you.

26 MS. BERK: Thank you.

27

28

1 SENATOR PETRIS: I'm not familiar with that newspaper
2 boy decision. I thought that was settled by the Hearst case way
3 back in the 1930s.

4 SENATOR MELLO: What happened recently was --

5 SENATOR PETRIS: Independent contractor fight.

6 SENATOR MELLO: -- there was a later case, I think, with
7 the San Francisco Chronicle.

8 But the situation, just briefly to explain it, the
9 newspapers are printed, and then they have the route carriers
10 within an area. They get paid so much a paper and so forth. But
11 then, in this case it was a person that took it out into the
12 outlying areas, and they had sort of a pick up, and then they had
13 a distribution point there where the carriers would come in at
14 that point.

15 They were trying to designate them as regular employees,
16 which means that they would have to pay considerably more on
17 their payroll --

18 SENATOR PETRIS: Payroll taxes.

19 SENATOR MELLO: It was resolved unfavorably towards the
20 paper.

21 I always thought newspaper carriers were in fact
22 independent contractors rather than employees.

23 SENATOR PETRIS: Thank you.

24 SENATOR MELLO: And real estate salespersons, too,
25 whether or not they are under the direction of their employer.
26 If they're a salesperson, whether they're under the direction of
27 their employer, the broker, or whether they are in fact -- it has
28 to do with them setting their time.

1 SENATOR PETRIS: Yes, as I remember the case, way back
2 when, there were three or four tests. One was control by the
3 employer of the location. The so-called independent contractor
4 was tied to a particular corner and couldn't go anywhere else.
5 If he had a route, he couldn't go anywhere else, so on and so
6 forth. But that's another subject.

7 Do you have any other questions?

8 SENATOR MELLO: No, thank you very much.

9 SENATOR PETRIS: May I ask, I have a couple of areas.

10 We get complaints from employers all the time about the
11 horrible lack of literacy among more and more of the younger
12 people seeking to work.

13 Do you have any notions about how your Department can
14 focus on that and put a spotlight on it as an assistance to both
15 making employees more eligible and being helpful to the
16 employers?

17 MS. BERK: Well, EDD oversees the Job Training
18 Partnership Program, and through the local programs there is a
19 lot of literacy programs that are going on.

20 From my background at the local level, I would say the
21 ones that seem to be the most effective are those that are joined
22 -- that are really on-site in the workforce, and that have
23 literacy aspects or they have aspects in the curriculum that
24 relate specifically to the work that the people are learning at
25 the time.

26 What happens is that when we run special remediation
27 programs, as they're called, a lot of people tend to drop out
28

1 because they want to be working. It's very hard to keep people
2 just in literacy programs.

3 So the ones that appear to be the most effective are
4 those that are joined with other vocational training. And we do
5 a lot of that through the Job Training Partnership Act.

6 SENATOR PETRIS: Elisabeth Dole has commented on that
7 problem, and she thinks the law needs to be amended; the JTPA
8 needs to be amended in order to improve the literacy part of the
9 program.

10 MS. BERK: Well, I think in the past, I think that's
11 correct. In the past, the focus was primarily on vocational
12 training, as you know. And what we're finding more and more as
13 the unemployment rate is low is that many of the people that are
14 eligible under JTPA have severe literacy problems. So, that's
15 becoming a bigger issue than it was initially.

16 SENATOR PETRIS: Recognizing that, is your Department
17 communicating at all with our Department of Education to kind of
18 dramatize the need so that a better job can be done in K-12, for
19 example?

20 MS. BERK: We work closely with the Department of
21 Education through the JTPA and other programs all the time. I
22 don't know of anything specifically underway at this point to
23 publicize that.

24 SENATOR PETRIS: I hope there will be some kind of
25 special effort. It's deplorable, it seems to me, in this
26 democratic society, that we have an increasing number of people
27 that are functionally illiterate. They just can't seem to do
28 anything.

1 MS. BERK: We do have a group looking at that issue. I
2 don't remember the name of the group that's taking a look at the
3 education impact. It's an area that's been written about a lot.
4 We're certainly looking at it in all of our programs.

5 SENATOR PETRIS: I haven't read much lately about
6 efforts of volunteers. Now, in my community where I live,
7 there's a splendid volunteer program that is trying to attract
8 more and more people; a one-on-one thing. A citizen comes
9 forward and says, "I'm willing to teach somebody how to read and
10 write," and they have graduations at the end of it, and a lot of
11 publicity, a lot of encouragement to get more people.

12 I wonder if we can expand that?

13 MS. BERK: It's interesting that you mentioned this, but
14 EDD has a special program that's going on now. We have
15 volunteers in all of our local offices. It's been co-sponsored
16 with a professional organization, the International Association
17 of Personnel and Employment Security.

18 In fact, we have a video that went out to our field
19 offices showing one of the volunteers with some of the people
20 that she was working with.

21 So, we do have some of our own staff people that have
22 been volunteering to work one-on-one with people to teach them to
23 read.

24 SENATOR PETRIS: That's great. I hope that can be
25 expanded to attract more people from the general public.

26 I think if more people knew about it, they would come
27 forward, and it wouldn't cost all that much because they
28 volunteer their time. Might need some materials.

1 MS. BERK: Right.

2 SENATOR PETRIS: Any other questions? Do I hear a
3 motion?

4 SENATOR BEVERLY: So move.

5 SENATOR PETRIS: Senator Beverly moves the confirmation.
6 Call the roll.

7 SECRETARY WEBB: Did you ask for any opposition?

8 SENATOR PETRIS: No, I don't think there is any. I'll
9 ask and make it official.

10 Is there any opposition? If not at the present time,
11 you will forever hold your peace.

12 Call the roll.

13 SECRETARY WEBB: Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Senator Craven. Senator Roberti.

20 SENATOR PETRIS: You've been recommended to the Floor
21 for confirmation.

22 MS. BERK: Thank you.

23 SENATOR PETRIS: Good luck.

24 MS. BERK: Thank you.

25 SENATOR PETRIS: Our next one is J. Richard Glade,
26 Unemployment Insurance Appeals Board.

27 MR. GLADE: Yes, sir. Good morning.
28

1 SENATOR PETRIS: Good morning.

2 MR. GLADE: Mr. Chairman --

3 SENATOR PETRIS: Are you qualified? And if you do feel
4 you're qualified, tell us why you think so.

5 MR. GLADE: For the record, my name is Richard Glade.
6 I'm generally known as Pete.

7 It's been my privilege to serve on the Unemployment
8 Insurance Appeals Board for four years now, almost five years.

9 As this Committee knows, our Appeal Board is a high
10 volume operation. Last year we decided in formal written
11 opinions almost 14,000 cases. What this means as a member of the
12 Board is the on the job training comes rather rapidly.

13 I'd like to think that my peers and my colleagues would
14 tell you I've done a reasonably good job on the Board. I can
15 assure you personally that I've tried to do so.

16 Before joining the Board, I was in a law firm in Los
17 Angeles, and we specialized there in industrial relations/labor
18 relations matters.

19 If you have any questions, Senator Petris or Members of
20 the Committee, I'd be happy to try and answer them.

21 SENATOR PETRIS: Any questions? I guess there aren't
22 any questions.

23 Is there any opposition? Anyone in support?

24 Well, we drew a blank all around. What do we do when we
25 have a blank? Do I hear a motion?

26 SENATOR BEVERLY: So move.

27 SENATOR PETRIS: Senator Beverly moves the confirmation.
28

1 Call the roll.

2 SECRETARY WEBB: Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven. Senator Roberti.

9 SENATOR PETRIS: Confirmation is recommended to the
10 Floor.

11 MR. GLADE: I appreciate it.

12 SENATOR PETRIS: Thank you.

13 MR. GLADE: Thank you, Members.

14 (Thereupon this portion of the
15 Senate Rules Committee hearing
16 was terminated at approximately
17 10:25 A.M.)

18 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

8th day of February, 1989.


EVELYN MIZAK
Shorthand Reporter

